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MARINE CORPS RECRUIT DEPOT/WESTERN RECRUITING REGION
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Subj: Standing Operating Procedure for Legal Matters

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Encl: (1) LOCATOR SHEET

Reports Required: List, Page v

1. Purpose. To promulgate legal advice, policies, and procedures, with respect to legal matters, to the staff, subordinate commands, organizations, and individuals who receive legal services from this Command.
2. Cancellation. ✓ Depot Order P5800.13 and ✓ Depot Order 5800.14.
3. Action. The Assistant Chief of Staff, Staff Judge Advocate (SJA) is, by statute, the legal advisor to the Commanding General. The Assistant Chief of Staff, SJA is responsible for the administration of all legal matters at this Command. All legal matters requiring official liaison with counsel external to this Command will be coordinated by the Assistant Chief of Staff, SJA. All legal matters within the Command will be accomplished in accordance with the procedures set forth in this Manual.
4. Summary of Revision. This revision contains a substantial number of changes which incorporate changes in the Manual for Courts-Martial, JAGINST 5800.7B (JAGMAN), and MCO P5800.8B (LEGADMINMAN) and must be completely reviewed.
5. Applicability. This Manual is applicable to all organizations, units, and personnel assigned to the Marine Corps Recruit Depot (MCRD), San Diego, California and Western Recruiting Region (WRR), including organizations, units, and personnel attached or assigned for temporary purposes, as well as those organizations for which this Command is the General Court-Martial Convening Authority in accordance with the reference and by letters of instruction assigning special court-martial convening authority for various Marine Corps Administrative Detachments to one of the Marine Corps Districts in the Western Recruiting Region.
6. Certification. Reviewed and approved this date.


A. LUKEMAN

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STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

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Log completed change action as indicated.

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STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

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STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

CHAPTER 1

GENERAL ADMINISTRATION

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STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

CHAPTER 1

GENERAL ADMINISTRATION

1001. GENERAL. This Manual is the standing operating procedure (SOP) for legal matters for MCRD, San Diego commands, WRR commands, organizations, tenant, and adjacent commands which use the legal services provided by the Office of the Assistant Chief of Staff, Staff Judge Advocate (SJA). This Manual supplements directives of higher authority and establishes, when necessary, procedures for the administration of legal matters at MCRD, and within the WRR.

1002. ORGANIZATION OF THE OFFICE OF THE ASSISTANT CHIEF OF STAFF, SJA. The organizational chart and functions of the Office of the Assistant Chief of Staff, SJA are published in the current edition of Depot Order P5450.4. The Office of the Assistant Chief of Staff, SJA consists of the following functional areas:

1. Military Justice Division

a. Uniform Code of Military Justice (UCMJ). Responsible for advice and representation in all aspects of discipline under the UCMJ. This includes: Advice to duty officers, preliminary inquiry officers, military police, Criminal Investigation Division, Naval Investigative Service; advice to legal officers, adjutants, and commanders; drafting of all charges and military justice - related convening orders; and providing counsel to represent the government at all Special and General Courts-Martial and Article 32 investigations. The Military Justice Division is located at Building 12, extension 3115.

b. Special Assistant U. S. Attorney (SAUSA). This officer, nominated by the Assistant Chief of Staff, SJA, and appointed by the Attorney General of the United States, prosecutes civilians in the U. S. District Court for the Southern District of California in misdemeanor cases occurring on MCRD; provides liaison with the U. S. Attorney and the Department of Justice on other criminal and civil matters; and is the special counsel and legal advisor to the Provost Marshal on civilian prosecutorial matters. The SAUSA Office is in Building 12, extension 3115.

c. Administrative Separation Boards. Provide a recorder for all administrative separation boards.

d. Other hearings. Provides government counsel to such other courts, boards, and hearings as directed by the Assistant Chief of Staff, SJA.

e. Court reporters. Responsible for taking, transcribing, and certifying all UCMJ, Article 32 investigations, special and general courts-martial, and other hearings as directed. The Court Reporter Office is located at Building 12, extension 3115.

2. Defense Division. Responsible for defense of criminal cases; providing advice to persons who request counsel under Military Rule of Evidence (M.R.E.) 305 (interrogations) and M.R.E. 321 (lineups); providing defendant pre-office hours and pre-Summary Court-Martial advice; representing parties at formal investigations; providing advice to persons referred to a judge advocate for counselling regarding voluntary reimbursement to the government in cases involving lost or damaged government property; when appropriate, advising complainants in UCMJ, Article 138, and U. S. Navy Regulations, Article 1106 cases; providing advice to petitioners to the Board for Correction of Naval Records and the Performance Evaluation Review Board; and advising uniformed Alleged Discriminating Officials (ADOs) in Equal Employment Opportunity (EEO) Commission matters. The Defense Division is under the administrative control of the Assistant Chief of Staff, SJA, MCRD and the operational control of and is reported on by the Regional Defense Counsel, Marine Corps Base (MCB), Camp Pendleton (telephone 725-6116). The Defense Division is located at Building 12, extension 3164.

3. Legal Assistance Division. Provides legal advice and assistance to eligible individuals on personal civil law matters such as divorces, wills, paternity allegations, estates, dissolutions, adoptions, real property transactions, consumer debt problems,

powers of attorney, taxes, and civil rights matters. Advocacy in certain civil and minor criminal matters may be authorized in eligible cases under the Expanded Legal Assistance Program (ELAP). The Legal Assistance Division is located in Building 12, extension 3164. (See this Manual, Chapter 11).

4. Administrative Law. Responsible for command advice on administrative law matters (e.g., matters other than those involving criminal law). This includes advice to the Command on civil liability of commanders, Freedom of Information Act, Privacy Act, environmental law, Occupational Health and Safety Act, federal fund raising regulations, standards of conduct, etc. The Administrative Law Office is located in Building 12, extension 3115. (See also this Manual, Chapter 7).

5. Review. Responsible for the review and post trial matters of all courts-martial, nonjudicial punishment appeals, UCMJ, Article 138 complaints, Article 72 proceedings, and Article 69 petitions. Provides advice to summary court-martial officers. The Review Office is located in Building 12, extension 3115. (See also this Manual, Chapter 5).

6. Administrative Support Division. Responsible for administrative matters in the Office of the Assistant Chief of Staff, SJA, including word processing, supply, and fiscal matters. Responsible for command advice on certain administrative separation matters, Manual of the Judge Advocate General (JAGMAN) investigations, and claims for and against the United States. (See this Manual, Chapter 8). Responsible for coordinating service of process, arrest warrants, and subpoenas at MCRD, San Diego, under JAGMAN Chapter XIII. (See this Manual, Chapter 10). This division is headed by the Assistant Chief of Staff, SJA for Administrative Support/Legal Administrative Officer, located at Building 12, extension 3115.

7. Labor Law Counsel. The special counsel for labor law provides command advice on all aspects of labor law, including collective bargaining agreement, EEO complaints, unfair labor practice complaints, grievances, adverse actions, and terminations. The special counsel is available to represent the government on any collective bargaining negotiating team, before EEO or Merit Systems Board hearing officers, at arbitration hearings, or any other type of labor hearing requiring representation. The Labor Law Counsel's Office is located at Building 12, Extension 3115.

8. Military Magistrate. The MCRD, San Diego Military Magistrate conducts administrative hearings involving Bar Orders, juvenile cases, and supervises the functioning of the Depot Traffic Board. The MCRD, San Diego Military Magistrate's Office is located at Building 31, extension 3121 (See this Manual, Chapter 6).

9. Initial Review Officer. MCRD, San Diego uses two Initial Review Officers: One at MCRD, and one at MCB, Camp Pendleton. The MCRD, San Diego Military Magistrate is designated as the Initial Review Officer at MCRD, San Diego. As such he is responsible for reviewing pretrial (and other) confinement under the Manual for Courts-Martial (MCM) (1984), the current edition of Depot Order 5800.10, and this Manual. The MCB, Camp Pendleton Initial Review Officer is requested to review pretrial confinement under MCM (1984), the current edition of Depot Order 5800.10, and Camp Pendleton directives. The MCRD, San Diego Initial Review Officer's Office is located at Building 31, extension 3121.

10. Legal Ethics Advisor. The Administrative Law Officer provides advice and counsel on legal ethics matters and client grievances, maintains professional ethics materials, and serves as liaison with the Navy Judge Advocate General (JAG) Ethics Committee (see JAGMAN 0165), and ethics committees of the several state bars and courts. The Legal Ethics Advisor may be consulted by any MCRD judge advocate on professional ethics matters.

11. Special Counsel. Experienced senior attorneys in the Office of the Assistant Chief of Staff, SJA are assigned as special advisors to the following staff sections in order to provide continuity and specialized advice: Assistant Chiefs of Staff, G-1, G-2/3, G-4, Comptroller; Naval Investigative Service (NIS); Military Police; Inspector; Public Affairs Officer; Personal Services Division; Civilian Personnel Officer; Family Services Center; Marine Corps Exchange; and Special Services. For a current listing of attorneys designated as special counsel, call the Executive Secretary of the Assistant Chief of Staff, SJA, Building 12, extension 3115.

12. Reserve Augmentation Unit (RAU). The RAU is composed of experienced Reserve Marine Judge Advocates who are prepared to assume judge advocate duties at MCRD, San Diego in the event of mobilization. They provide legal services support and receive training on legal matters while completing their annual drill requirements.

1003. LEGAL RESEARCH FACILITIES

1. Law Library. The MCRD, San Diego Law Library in Building 12 is available for use by federal government attorneys 24 hours a day, seven days a week. Arrangements for access after working hours may be made in advance by consulting the Legal Services Chief, extension 3115, or the Assistant Chief of Staff, SJA for Administrative Support, extension 3115, during normal working hours. After working hours, consult the Depot Officer of the Day, extension 3571.

2. WESTLAW. The WESTLAW computer-assisted legal research terminal at the Depot Law Library is available for use by federal government attorneys.

1004. INSTRUCTION AND TRAINING

1. Requirements

a. Instruction on Standards of Conduct and Government Ethics is required by the current editions of SECNAVINST 5370.2 and DepO 5370.4 for service members and civilian employees upon assumption of duties, and thereafter, annually.

b. Instruction on the articles listed in the UCMJ, Article 137 and administrative separations (the current edition of MCO P1900.16) is required within six days of entrance to active duty, after six months active duty, and upon reenlistment for all military personnel.

c. Instruction on the Law of War (LOW) (see the current edition of MCO 3300.3) is required as part of entry-level Essential Subjects Training (EST), post entry-level EST (see the current edition of MCO 1510.2), and functional and skill training of judge advocates and other personnel responsible for mission-oriented LOW training. The requirement for functional and skill training in the LOW will be satisfied by attendance at the Marine Corps LOW Course (quotas requested per the current edition of MCO P1500.12, Marine Corps Formal Schools Catalog) or attendance at an equivalent level LOW course taught at the Judge Advocate General's School of the Army (TJAGSA). Command sponsored functional training may be provided by graduates of the above courses.

d. Instruction on the Code of Conduct, required by Navy Regulations, Article 1122, will be conducted within six days of entry into the Marine Corps, after six months service, and upon reenlistment (or promotion for officers). Code of Conduct training will be included as part of the Depot annual training plan (Depot Bulletin 1510 series).

e. Instruction in the Privacy Act and the Freedom of Information Act will be conducted as mission training for personnel who are assigned to resolve Privacy Act and Freedom of Information Act issues. The sample training packages found in the current edition of MCO P5211.2 (Privacy Act) and the current edition of SECNAVINST 5720.42 (Freedom of Information Act) may be used to effect instruction.

2. Unit Training. Unit training schedules should provide for instruction in LOW, search and seizure, investigations, legal assistance (including contracts, taxation, agency, powers of attorney, consumer law matters, marriage, divorce, and adoption), criminal law, and administrative law. The Assistant Chief of Staff, SJA will provide instructors and other assistance upon request.

3. Officer Training. Convening authorities are to establish a program designed to develop proficiency on the part of officers and staff noncommissioned officers in the performance of legal or quasi-legal duties such as investigating officer, preliminary inquiry officer, and summary court-martial officer. See also paragraph 1006 of this Manual.

1005. INSPECTION OF LEGAL FILES. The Assistant Chief of Staff, SJA will inspect, or cause inspection of, legal files of subordinate units to include the WRR, at least

annually. Legal files specifically inspected are: Unit Punishment Book (UPB), confinement and release orders, court-martial files, investigation files, administrative discharge files, and legal publications. Other aspects of legal administration may be examined at the discretion of the Assistant Chief of Staff, SJA. All inspections will be coordinated with the Depot Inspector. Legal Services Officers of all organizations are encouraged to consult the Legal Services Chief, Building 12, extension 3115 for checklists and assistance.

1006. APPOINTMENT OF LEGAL SERVICES OFFICERS. Each special court-martial convening authority will appoint an officer as the Command Legal Services Officer. The Legal Services Officer shall have direct access to the convening authority, as required by UCMJ, Article 6(b). The appointment may be as an additional duty, but it will be made in writing. A copy of the order appointing the Legal Services Officer will be forwarded to this Headquarters (Attention: Assistant Chief of Staff, SJA). To enhance expertise and continuity, absent extraordinary circumstances, the Legal Services Officer should be appointed for a minimum period of one year. Each special court-martial convening authority will arrange with the Assistant Chief of Staff, G-2/3, for the Legal Services Officer to attend training at a resident, nonlawyer legal officer course convened either at the Naval Justice School, Newport, RI, or the Fleet Training Center, San Diego, CA.

1007. FORMS. Units are to utilize Depot approved forms, when available, in processing legal matters. A complete list of forms is contained in Appendix A. The forms may be obtained from the Management Assistance Branch, MCRD, San Diego by calling (619) 225-5710 or FTS 893-5710.

STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

CHAPTER 2

SEARCHES, SEIZURES, INSPECTIONS, AND TELEPHONE TRACING

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STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

CHAPTER 2

SEARCHES, SEIZURES, INSPECTIONS, AND TELEPHONE TRACING

2001. GENERAL. This chapter is designed to provide basic guidance for searches, seizures, inspections, and telephone tracing. The law regulating searches, seizures, and inspections is complex and constantly evolving. Accordingly, this chapter is designed to provide an introduction to M.R.E. 311-317. For specific guidance concerning a particular case, consult the Military Justice Officer, extension 3115.

2002. WHO MAY AUTHORIZE A SEARCH. A commanding officer, who exercises authority over the person or place to be searched, is the appropriate official to authorize a search aboard MCRD. For example, if law enforcement officials seek to conduct a probable cause search of a Marine, that individual's commanding officer would be empowered to grant search authorization in the appropriate circumstances. On the other hand, if it is in an area or object which is to be searched (car, barracks room, locker, etc.), then the commander who controls the area which is involved is the authorizing official. For instance, if the request is to search a barracks room, the commander who controls that unit's barracks would be the authorizing official. For persons or places that are not directly controlled by a commanding officer (civilians, any area not in a company or battalion area, etc.) the Commanding General, or in his absence, the Depot Commander would be the appropriate official. Thus, only the Commanding General can authorize a non-exigent probable cause search of a civilian aboard the Depot. Similarly, only the Commanding General can authorize searches of areas such as the Exchange complex, VIP quarters, or married housing aboard MCRD. Likewise, for private property in Special Services areas (boats in the slips, trailers in storage, etc.) or property in a Depot common area (vehicles in parking lots), only the Commanding General would have the requisite authority to authorize a search where the ownership of the property is unknown or is known to belong to a civilian. (Note: In addition to a commanding officer, a civilian federal judge has authority to issue search and arrest warrants which may be executed on a military installation).

2003. THE AUTHORITY TO AUTHORIZE A SEARCH MAY NOT BE DELEGATED. The decision to authorize a search based on probable cause may be made only by the commander, or the person acting in the commander's place if the commander is absent from the command. This authority may not be delegated. See M.R.E. 315(d)(1) and JAGMAN 0177.

2004. THE AUTHORIZATION TO SEARCH SHOULD BE IN WRITING. The commander may authorize a search orally (including by telephone). However, it is strongly recommended that the commander reduce to writing that information which formed the basis for the authorization to search. This practice not only clearly sets forth the scope of the authorization to search, but also records the reason for conducting the search. MCRD Form 5800/4, "Request and Authorization for Search and Seizure," should be used.

2005. THE DECISION MUST BE MADE PERSONALLY. The commander must personally weigh and evaluate the information presented and then make his own determination as to whether probable cause exists. The decision rests with the commander, not the SJA, not a CID or NIS agent, and not anyone else, although it is perfectly appropriate, and recommended, for the commander to seek advice from, e.g., a judge advocate. A search may not be authorized on the unsupported conclusion of a criminal investigator. Therefore, commanders must insist upon a thorough briefing of the information available to establish probable cause.

2006. PROBABLE CAUSE DEFINED. Probable cause exists when the person authorizing the search, considering the totality of the circumstances, reasonably believes that an offense has been committed, that specific evidence of the crime exists, and that this evidence is in the particular place to be searched. The test is not "maybe" but "probably". One test to determine "reasonable belief" is the "more likely than not" test, that is, "a 51 percent likelihood." In applying this test, the person authorizing the search should consider the "totality of the circumstances." See MCM, Part IV, appendix 22 (1984), and M.R.E. 315(f), for a discussion of "reasonable belief," and "basis in fact."

2007. THE INFORMATION MUST BE RELIABLE. In determining whether the information presented to the commander establishes the probability, the commander should consider the sources of the information. Cf., M.R.E. 315 (f)(2).

1. Credibility. When a commander receives information from an individual who says he has personally observed evidence of criminal activity in a specific place, the commander must first consider whether to examine the person's credibility, i.e., "Do I believe what this person is telling me? Is he trustworthy?" If the commander believes that the individual is reliable and that the proffered information is believable, then a search may be authorized. Hearsay information is a proper means of determining credibility.

2. Oaths. The information provided to the commander should be furnished under oath. Any written statements submitted in support of the request should, preferably, be sworn by the person who made the statement. Any additional factual information should also be sworn to by the person furnishing the information. The person relating information may include hearsay information, which may be properly considered. Persons empowered to authorize searches have the authority to administer oaths. See JAGMAN 2502a(4)(b). The following oath may be used: "Do you swear that the information is true (so help you God)?"

3. Corroboration. If the reliability of the source of the information is unknown, i.e., "I don't know the witness," the search may be authorized if the informant's information is corroborated. If the informant's information is sufficiently detailed and if enough of the details provided by the informant are verified, the informant's information will serve as a valid basis for determining that probable cause exists.

2008. PARTICULARITY AND SCOPE

1. Particularity. A search authorization must describe the place to be searched and the items to be seized. The searching official should be left with no doubt or discretion as to where to search. Cf., this Manual, paragraph 2005, and M.R.E. 315(f).

2. Area Limits. The size of the place that may be searched is dependent upon the specific facts of each case. The search of a squad bay for stolen articles is reasonable, if authorization is sought under circumstances suggesting that the articles could not have been removed. However, the search of an entire battalion, an entire block within a housing area, or an entire Bachelor Enlisted Quarters complex would be unreasonably broad under most circumstances.

3. Item Description. The search authorization must describe with particularity the items to be seized. This description must not be so broad as to authorize a general exploratory "fishing expedition." The items may be contraband (e.g., marijuana, sawed-off shotgun), fruits of a crime (e.g., "stolen Panasonic tape recorder Model XYZ--3, with a scratch on the side, and, if known, the serial number; a crowbar about two feet in length"), or other evidence which would aid in a criminal prosecution (e.g., switchblade knife). Items not described in the authorization, but which the person making the search believes to be related to criminal activity, may be seized if found in plain view in the area authorized to be searched. For example, the commanding officer has authorized a search for a stolen watch, and the person making the search finds a baggie of marijuana. See M.R.E. 316(d)(4)(C). Once the search has reached the physical limits authorized, or the described items have been located, the search must stop, unless further authorization is obtained.

2009. FORM. The "Request and Authorization for Search and Seizure" (MCRD-Form 5800/4) is the form to request and record search authorizations. This form may be obtained from the Assistant Chief of Staff, SJA (Administrative Support Division), extension 3115.

2010. SEARCHES NOT REQUIRING COMMANDER'S PROBABLE CAUSE DETERMINATION. The following are among the types of searches that may be conducted without first obtaining authorization from a commanding officer. See M.R.E. 314.

1. Consent Search. Searches of any person or property may be conducted with

lawful consent. See M.R.E. 314(e). ALWAYS ASK THE INDIVIDUAL'S CONSENT TO SEARCH, EVEN IF THE COMMANDER HAS AUTHORIZED THE SEARCH. If the person consents, probable cause issues will not be a problem. If the person does not consent, go ahead with the search if the commander has authorized it. Valid consent often will eliminate litigation of probable cause issues.

a. Voluntariness. To be valid, consent must be voluntary. A person's knowledge of the right to refuse consent is a factor in determining if consent was voluntary. Mere submission to authority is not consent.

b. Documentation. Use JAG Manual Form A-1-m to record consent to search. If a person gives partial or limited consent, the search may not exceed the scope of that consent, unless there is a valid independent basis for searching beyond the limits of the consent. An individual may withdraw consent at any time and the search must cease unless probable cause exists or existed at the time the search commenced.

2. Search Incident to Lawful Apprehension. A person who has been lawfully apprehended may be searched. The apprehending official may search for weapons and destructible evidence in the area within the immediate control of the person apprehended. This includes automobile passenger compartments. See M.R.E. 314(g).

3. Government Property. A person does not normally have a reasonable expectation of privacy in government property that is not issued or assigned for personal use. Property that is issued for personal use (and thus there is a reasonable expectation of privacy) includes such items as wall and footlockers, government quarters intended for exclusive use and possession, etc. Items which are not normally issued or assigned for personal use normally include such things and areas as work or office spaces, common areas in the barracks, office filing cabinets, etc. Some property may or may not have a reasonable expectation of privacy, depending on the circumstances, e.g., briefcases, desk drawers, etc. Commanders should seek advice from the Assistant Chief of Staff, SJA before conducting a search of areas or items which may even arguably be subject to an expectation of privacy. See also paragraph 2010.1.a of this Manual regarding consent.

2011. SEIZURE OF BODILY FLUIDS

1. Search Authorization. Non-consensual extraction of bodily fluids (e.g. blood, urine) of a suspect may be compelled by search authorization under M.R.E. 315.

2. Without Search Authorization. Non-consensual extraction of bodily fluids (e.g., blood, urine) may be compelled without search authorization only if there is clear indication that evidence of a crime will be found and there is reason to believe that the delay which would occur if a search authorization were sought could result in the destruction of the evidence. Involuntary extraction of bodily fluids must be done in a reasonable fashion by a person with appropriate medical qualifications. See M.R.E. 312(d).

3. Valid Medical Purposes and Inspections. Non-consensual extraction of bodily fluids (e.g. blood, urine) may be compelled without search authorization for valid medical purposes and inspections under M.R.E. 312(f) and M.R.E. 313.

4. Inadmissible Evidence. Other command-directed seizure of bodily fluids is normally inadmissible in court-martial, but is authorized for certain administrative purposes. Consultation with the Military Justice Officer, extension 3115, is encouraged for all search and seizure matters.

2012. INSPECTIONS AND INVENTORIES. INSPECTIONS AND INVENTORIES ARE NOT SEARCHES. An inspection is a command-authorized examination of an area or unit to insure that any or all of the following requirements are met: That the command is properly equipped, functioning properly, maintaining proper standards of readiness, sanitation, and cleanliness; and that personnel are present, fit, and ready for duty. If the examination is for the primary purpose of gathering evidence for use in courts-martial, it is not an inspection, it is a search "subterfuge" and is prohibited by M.R.E. 313. If, however, during the course of a valid inspection, contraband or other evidence of criminal activity is discovered, the evidence may be lawfully seized and admitted in

courts-martial. Likewise, if at some point during an inspection the inspector develops probable cause to believe that contraband is located in a specific place beyond the scope of the inspection, he may seek authorization to search, under M.R.E. 315 and 316.

2013. TELEPHONE TRACING AND MONITORING FOR LAW ENFORCEMENT PURPOSES

1. The current edition of SECNAVINST 5520.2 sets forth procedures that must be followed to trace or monitor telephone calls for law enforcement purposes. See also M.R.E. 317.
2. All requests for telephone tracing or monitoring must be submitted to the Commanding General for a decision. An appropriate judge advocate will advise the Commanding General prior to his decision on such requests.

STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

CHAPTER 3

MILITARY CONFINEMENT

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STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

CHAPTER 3

MILITARY CONFINEMENT

3001. GENERAL. The procedures detailed below are applicable to military confinement for both MCRD and the WRR. However, the place of confinement and the availability of an Initial Review Officer for a hearing can present a substantial practical problem for significant portions of the WRR. This problem becomes even greater if the confinee is female. When there is any question as to the place of confinement, the Military Justice Officer, FTS 893-3115, Commercial 619-225-3115, should be immediately contacted. Questions regarding the legal basis for confinement may also be directed to the Military Justice Officer. Procedural guidance for confinement and the MCRD Initial Review Officer Program may be found in the current edition of Depot Order 5800.10. Rules for Courts-Martial (R.C.M.) 302, 304, and 305 provide information concerning apprehension, pretrial restraint, and pretrial confinement, respectively. Additional information is provided in the current edition of SECNAVINST 1640.9. Questions regarding administrative procedures for confinement (e.g., how many pairs of cushion-sole socks should a prisoner have?) may be directed to Commanding Officer, Base Brig, MCB, Camp Pendleton, telephone (619) 725-4662, AUTOVON 993-4662. For information regarding Marines who are confined by civilian authorities, see paragraphs 10012 and 10013 of this Manual.

3002. PROCEDURES SUMMARY

1. Pretrial Restraint

a. Definition. Pretrial restraint is moral or physical restraint upon a person's liberty which is imposed before and during disposition of offenses. Pretrial restraint may consist of restriction in lieu of arrest, arrest, or confinement. See R.C.M. 304(a) and 305. See paragraph 4010.3 of this Manual regarding the critical need for expeditious processing of all cases involving any form of pretrial restraint.

b. Authority to Order. Any commissioned officer is authorized to order pretrial restraint of enlisted persons. Only a commanding officer may order an officer into pretrial confinement. The confinement of any member of this Command will be expeditiously reported to the Commanding General (Attention: Assistant Chief of Staff, SJA). Cf., R.C.M. 304(b)(4).

c. Probable Cause. Pretrial restraint may be ordered only upon probable cause, e.g., if there is reasonable belief that:

- (1) An offense triable by court-martial has been committed;
- (2) The person to be restrained committed it; and
- (3) The restraint ordered is required by the circumstances.

d. Notification Procedure. R.C.M. 304 requires that the person to be restrained be notified either orally or in writing, including the terms or limits, and the nature of the offense that is the basis for restraint. For procedures and forms, use the current edition of Depot Order 5800.10.

e. Termination. Lawful pretrial restraint may be terminated by a person authorized to order it. Otherwise, pretrial restraint will terminate upon sentence adjudged, acquittal, or dismissal.

f. Prohibition Against Punishment. Pretrial restraint is not to be used as punishment. Rather, it is used to ensure the presence of the person or to prevent foreseeable serious criminal misconduct. Other limitations upon a service member's liberty for operational or other military purposes, independent of military justice, are not considered pretrial restraint. See R.C.M. 304(c), (f), (h), and appurtenant discussion.

2. Pretrial Confinement. See R.C.M. 305. When a person is to be confined prior to trial, commanding officers will accomplish the following:

a. Submit a request for legal services (RLS) to the Military Justice Officer, not later than the end of the second working day after placing the accused in confinement. MCRD Form 5811/8 may be used.

b. Complete a commanding officer's confinement report to the Initial Review Officer within 72 hours of confinement. See the current edition of Depot Order 5800.10 for procedures and forms.

c. Present the accused before the Initial Review Officer for a hearing within seven days of confinement.

3. Advice to the Accused on Pretrial Confinement. The current edition of Depot Order 5800.10 provides procedures and forms by which each person confined will be given the following required advice prior to confinement, see also R.C.M. 305(e):

a. The nature of the alleged offenses;

b. The right to remain silent, provided that any statement made by the accused may be used against that person;

c. The right to retain civilian counsel at no expense to the U. S. Government, and the right to request assignment of military counsel;

d. The procedures by which pretrial confinement will be reviewed.

4. Review of Pretrial Confinement

a. Review. Review may be completed prior to confinement. Consult the current edition of Depot Order 5800.10 and the Military Justice Officer, extension 3115.

b. Military Judge's Review. Upon motion for relief, the Military Judge will review the propriety of pretrial confinement under R.C.M. 305(j), and order administrative credit for time confined if appropriate. The Military Judge may also order the release of an accused under certain circumstances.

5. Pretrial Confinement in Excess of 30 Days. Pretrial confinement in excess of 30 days can be approved only by the officer exercising General Court-Martial jurisdiction over the accused. Accordingly, on the 21st, 51st, and 81st day of pretrial confinement, any commander who has ordered an accused into pretrial confinement will submit written justification for continued pretrial confinement of the accused to this Headquarters (Attention: Assistant Chief of Staff, SJA). The Assistant Chief of Staff, SJA will review the justification and prepare the appropriate correspondence for the Commanding General's signature. (See paragraph 7102.2a(6) of SECNAVINST 1640.9A).

6. Confinement as a Result of Court-Martial Sentence. See this Manual, paragraph 5004, and the current edition of Depot Order 5800.10.

7. Confinement Incident to or Resulting from Vacation of Suspended Sentence

a. Confinement. A probationer may be confined pending vacation hearing. See also this Manual, paragraph 5010.

b. Vacation Hearing. Use the current edition of Depot Order 5800.10 for procedures and forms.

(1) A court-martial convening authority may vacate a suspended Summary or Special Court-Martial sentence that includes confinement, but not a punitive discharge, only after a hearing has been held. A written record of the hearing, indicating the decision, reasons for the decision, and evidence relied upon must be made. R.C.M. 1109(e) has more information. The Assistant Chief of Staff, SJA will provide all legal support for these hearings.

(2) When the confinement resulted from a General Court-Martial sentence or a Special Court-Martial sentence which included a punitive discharge, the Special Court-Martial convening authority, after personally conducting a hearing, must forward the

report of hearing to the Commanding General for decision; and if appropriate, vacation of the suspension and imposition of confinement.

c. Review. An Initial Review Officer will be requested to review confinement under this paragraph if the vacation decision is pending seven days after confinement. For purposes of subparagraph 3003.6b(2) of this Manual, the vacation hearing, if conducted by the Initial Review Officer, will serve as the review.

d. Other Action. At the commanding officer's discretion, the offenses which form the basis for vacating the suspension may also be referred to nonjudicial punishment or court-martial. Cf., R.C.M. 306.

3003. FEMALE PRISONERS. There are no military confinement facilities in southern California authorized to accept female prisoners. When pretrial confinement is warranted, females may be placed in the Federal Metropolitan Correctional Center in San Diego, telephone 232-4311. See the current editions of COMNAVBASESANDIEGOINST 1640.1 and SECNAVINST 1640.9; paragraph 1302.4 of the Marine Corps Manual; and paragraph 3002 of this Manual for additional guidance. The same procedure is used when confining female Marines that is used when confining male Marines, with one important exception: An Initial Review Officer's hearing must be held prior to confining females. When females are to be placed in post-trial confinement, the place of confinement will be determined by Headquarters, U. S. Marine Corps.

3004. WESTERN RECRUITING REGION COMMANDS. When the decision is made to place a member of the WRR into pretrial confinement, the Military Justice Officer, telephone (619) 225-3115, AUTOVON 957-3115, FTS 893-3115, shall be notified as soon as practicable.

STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

CHAPTER 4

PROCESSING MILITARY JUSTICE CASES

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STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

CHAPTER 4

PROCESSING MILITARY JUSTICE CASES

4001. GENERAL. The law governing military justice procedures is set forth in the Constitution of the United States; the UCMJ, 10 U.S.C. §801, et seq.; the Manual for Courts-Martial, United States, 1984; the Manual of the Judge Advocate General of the Navy; the current edition of MCO P5800.8, Marine Corps Manual for Legal Administration (LEGADMINMAN), and other directives and cases construing the foregoing. Further guidance regarding trial matters is found in the rules of the Sierra Judicial Circuit. Specific advice on the law governing military justice may be obtained from the Assistant Chief of Staff, SJA. All commanding officers and convening authorities, regardless of grade, are entitled and encouraged to communicate directly with the Assistant Chief of Staff, SJA on military justice matters.

4002. MILITARY JUSTICE LEGAL ADVISORS. Military Justice Legal Advisors designated by the Assistant Chief of Staff, SJA, are available on an "on call" basis to provide command legal advice and assistance to commanding officers; duty officers; NIS; CID; Military Police (MP); investigative and other law enforcement officers; MCRD Legal Services Officers; and other duty personnel. See American Bar Association, Standards for Criminal Justice, § 1-7.9. (2d Ed.) The names, grades, and office/quarters telephone numbers of the Military Justice Legal Advisors will be published to the NIS, PMO, and Depot Officer of the Day by the senior Military Justice Legal Advisor. During working hours, a Military Justice Legal Advisor may be consulted at extension 3115. After working hours, a Military Justice Legal Advisor may be contacted by calling the PMO Desk Sergeant at extension 3601.

4003. LEGAL HOLD FOR ACCUSED PERSONS AND WITNESSES

1. Identification and Preliminary Steps. The identity of witnesses will normally be determined in the course of the command-conducted preliminary inquiry or investigation into an incident. Accordingly, unit Legal Services Officers must take the first steps to place the accused and prospective witnesses, as their identities become known, on legal hold.

2. Legal Hold: Counsel Duties. When a Request for Legal Services (MCRD Form 5811/8) is received by the Military Justice Officer, the trial counsel or Military Justice Officer will review the case to determine the identities of additional witnesses to be placed on legal hold.

a. Trial Counsel Duties. No later than the close of business of the second day after receipt of preferred charges, the trial counsel will review the case file to determine the identities of the witnesses to be placed on legal hold, and will take steps to have such witnesses placed on legal hold. Should the trial counsel assigned to the case be unavailable, the Military Justice Officer will review the case and cause the witnesses to be placed on legal hold. The Military Justice Officer has supervisory responsibility for insuring that witnesses are placed on legal hold in a timely manner.

b. Defense Counsel Duties. The defense counsel will determine the identities of witnesses that the defense desires to be placed on legal hold, and will notify the trial counsel assigned to the case and the Military Justice Officer of the name, grade, unit, and telephone number of each witness (within four working days of assignment of the case). Early determination of the need for a witness is essential to ensure that individuals can be placed on legal hold, and can be given as much time as possible to modify leave, travel, transfer, plans, etc. Failure to submit a timely request could be viewed as a waiver of the right, if one exists, to the attendance of the witness.

3. Procedures for Legal Hold. The persons whose presence will be necessary for processing courts-martial or investigations will be placed on legal hold using the following procedures: The preliminary inquiry officer, unit Legal Services Officer, or trial counsel will notify the person's commanding officer, executive officer, or Legal Services Officer, personally or by telephone, requesting that the person be placed on legal hold. The date, time, person called, and names of witnesses requested to be put

on legal hold will be recorded. The Military Justice Officer will prepare a confirming letter or message for signature or release by the Assistant Chief of Staff, SJA, MCRD, San Diego.

4. Retention Beyond Expiration of Service (EAS). Court-martial jurisdiction continues over a person when action with a view towards trial of that person is taken. Actions with a view towards trial include apprehension, imposition of restraint, and preferral of charges. R.C.M. 202(c). When an action with a view towards trial is taken prior to termination of enlistment, the accused may be retained in the service for trial beyond when his period of service would otherwise have expired. See MCO P5800.8B (LEGADMINMAN), paragraph 3001. When necessary to retain the accused in the service for trial after the EAS, appropriate unit diary and service record book (SRB) entries should be made, by the accused's unit, in accordance with the current edition of MCO P1070.12 (IRAM); and MCO P1080.35E (PRIM), paragraphs 8043 and 8057. Trial counsel will insure that, if necessary, appropriate steps are taken to retain an accused beyond EAS for trial. There is no authority to keep a witness or a respondent in an administrative discharge case on legal hold past his EAS. If a witness to an offense, or an accused is scheduled to be released from active duty prior to trial, the unit Legal Services Officers will notify the Military Justice Officer, extension 3115.

4004. PRETRIAL CONFINEMENT. See this Manual, Chapter 3 and the current edition of Depot Order 5800.10.

4005. COMMAND ACTION REGARDING OFFENSE REPORTS

1. General. Upon receipt of information indicating that a member has allegedly committed an offense punishable under the UCMJ, the immediate commander must decide whether this is an appropriate matter for a criminal investigation (by NIS or CID) or a preliminary inquiry of the suspected offenses. The purpose of a criminal investigation is to identify serious violations of the UCMJ in a criminal, common law sense, disclose the identity of those committing those offenses, and, if appropriate, build a case for criminal prosecution in a courts-martial. The immediate commander is under a duty to try to find out exactly what happened. He may do this himself, direct a subordinate to do so, or cause another agency (e.g., CID or NIS) to do so. This process is called a "preliminary inquiry" into the suspected offense. Special requirements for preliminary inquiries into recruit allegations are covered in paragraph 4008.2a-d of this Manual.

2. Preliminary Inquiry. The preliminary inquiry may consist of an examination of the allegations, statements of witnesses, unit diary or SRB entries, real evidence, reports of investigations, MP, CID, or NIS reports, and any other evidence. It is usually informal. See R.C.M. 303. The purpose of the preliminary inquiry is to ascertain and report the relevant facts to provide the commander with a factual basis for any further action that he determines is appropriate. The process is more fully described below. Preliminary inquiries are conducted under R.C.M. 303. Commanders are strongly encouraged to order preliminary inquiry officers to contact the Military Justice Division, Office of the Assistant Chief of Staff, SJA, before commencing their preliminary inquiries. Commanders must also comply with the current edition of SECNAVINST 1630.2 which requires that "all criminal offenses brought to the attention of a Marine Corps command located at a Marine Corps installation will be reported immediately to the installation Provost Marshal for appropriate action." Following consultation with the Assistant Chief of Staff, SJA, if the SJA determines as a matter of law that the allegations involve a major criminal offense (punishable under the UCMJ, federal, or state law by confinement in excess of one year), the Provost Marshal will report the matter to the NIS for possible investigation. See SECNAVINST 5520.3 paragraph 4a(1). Commanders are directed to immediately report all allegations of officer misconduct to the Assistant Chief of Staff, SJA as soon as possible, before commencing any investigation and before referring or reporting the matter to any external agencies. In drug and alcohol related incidents, commanders should review Department of the Navy policy regarding alcohol and drug abuse, set forth in the current edition of SECNAVINST 5300.28, the Marine Corps policy concerning illegal drugs, set forth in the current edition of MCO P5300.12, and the current edition of DepO P5300.7 regarding MCRD policy and procedures in substance abuse cases. For procedures for competence for duty examinations, see the current edition of BUMEDINST 6120.20 and M.R.E. 312. M.R.E. 313(b) has a description of when medical examinations are admissible as evidence in a court-martial, and when they are not. See also this Manual, paragraph 4008.2 and 3,

requirements to report incidents to higher authority.

3. Criminal Investigation. Criminal investigations are normally done by the Criminal Investigation Division (CID) of the Provost Marshal's Office, the Naval Investigative Service (NIS), or other law enforcement activity. Before a commander requests investigative assistance from NIS, or other investigative activity, it is encouraged that the Assistant Chief of Staff, SJA be advised of the nature of the suspected offense and the circumstances surrounding it.

4. Polygraphs. Exculpatory polygraph examinations (lie detector tests) are available from the NIS or CID under appropriate circumstances. Those Marines identified as drug users by urinalysis test, but who deny drug involvement, are particularly likely to request a polygraph examination. Requests from those Marines should be promptly forwarded, and arrangements made for a polygraph test when practicable. The current edition of SECNAVINST 5520.4 provides further information on polygraph examinations.

5. Elements of the Offense. The Preliminary Inquiry Officer (PIO) must be familiar with the elements of the alleged offenses. These are found in MCM, Part IV (1984). As some facts may give rise to more than one offense, the PIO should be prepared to recognize and identify other offenses suggested by the evidence. When questions arise, consult the Military Justice Officer or Trial Counsel, extension 3115.

6. Preliminary Evidentiary Matters. Normally, the PIO should examine the evidence and allegations to determine what leads are available. The evidence may indicate a need to question witnesses to obtain documentary evidence, or to contact another investigative agency, such as CID or NIS. Preliminary inquiries must not be delayed while awaiting CID or NIS reports relating to the same matter. The PIO should, however, contact these agencies and obtain copies of any relevant statements which may be available. In some circumstances, those agencies may have completed an investigation which may eliminate the need for further evidence gathering by the PIO.

7. Interviewing Witnesses

a. The PIO should first question the victim. UCMJ, Article 31 rights are neither necessary nor appropriate for the victim, unless the victim is also a suspect. The victim can usually identify the alleged offender, identify the other witnesses, and fully describe the events. The PIO should obtain a written statement from the victim setting forth all the details. The victim should be questioned closely, probing for information omitted (perhaps as a result of forgetfulness, lack of understanding of the significance of certain facts, or fear). The PIO should not substitute his thoughts for those of the victim. The PIO should not coerce or otherwise induce the victim to say anything other than the truth, as the victim recalls it. In all likelihood, the PIO will question the victim more than once in order to follow up on leads gained by talking to other witnesses or suspects.

b. The PIO should then question all other witnesses, following the procedure used in questioning the victim. Do not warn witnesses under UCMJ, Article 31 if they are not suspects. Each witness should be questioned separately. The PIO should order witnesses to inform him if anyone seeks to influence their testimony.

8. Interrogating Suspects and Females. The PIO should interview the suspect. The PIO should have the suspect complete the "Suspect's Rights Acknowledgement Statement," MCRD Form 5811/15, before interrogating the suspect. If the suspect desires counsel, the interview must cease immediately, and it may not be renewed, except at the specific, knowing, intelligent request of the suspect. To provide counsel, the PIO should consult the Chief Defense Counsel, MCRD, San Diego, who will make a defense counsel available to the suspect. The current edition of MCO 5830.2 provides that interrogation of females will ordinarily be accomplished only in the presence of another female, preferably a female MP, female Marine officer, or female Marine noncommissioned officer.

9. Legal Hold During Preliminary Inquiry. Essential witnesses must be quickly identified and their unauthorized transfer must be prevented. The PIO should immediately report to his unit Legal Services Officer or Adjutant the name of any witness who is likely to be absent due to transfer, TAD, leave, or discharge--and

request that the witness be placed on legal hold. (See this Manual, paragraph 4003).

10. Format for Preliminary Inquiry Report. A letter report, using the same format as a JAGMAN investigation, should be followed when a written report is required. See JAGMAN A-6. The report should include all statements, documents, pictures, sketches, and other evidence that the PIO has gathered. Typewritten reports are not necessary, handwritten (pen and ink) reports are perfectly acceptable. When alleged offenses are unfounded or minor, an oral report may suffice. The following information is required:

a. For each witness: the name, grade, unit (or address of civilian), status, home telephone number, expected date of transfer or discharge, and any other information that may assist in locating or keeping track of the witness.

b. If the PIO has been directed to take statements under oath, the witness will be sworn as follows:

Do you affirm (or swear) that the evidence you shall
give in the matter now under investigation shall
be the truth, the whole truth, and nothing but the
truth (so help you God)?

The statement will include, under the signature of the witness:

Subscribed and affirmed (sworn) before me this _____ day of
_____, 19____.

Signature of PIO

11. Surrender to Civilian Authorities. It is the policy of the Secretary of the Navy that when disciplinary proceedings involving military offenses are pending, commanding officers must obtain specific guidance from a judge advocate before they decide whether to retain the alleged offender for military prosecution or to surrender such a person to federal, state, or local officials. See paragraph 5013 of MCO P5800.8B (LEGADMINMAN), the current edition of DepO 5800.10, and this Manual, paragraph 10012. For further guidance, consult the Military Justice Officer, extension 3115.

12. Victims

a. All victims, when circumstances dictate, should be informed promptly of the availability of emergency medical and social care, and when necessary, should be provided appropriate assistance in securing such care.

b. Commanders should insure that an appropriate representative informs all victims of:

(1) Available crime victim compensation, if any, including the possibility of filing a claim against the government. See paragraph 4007.1 of this Manual.

(2) Available community-based victim treatment programs.

(3) The stages in the military criminal justice process of significance to the victim, and the role that the victim plays in the process.

(4) How the victim can obtain additional information about the process and the case.

c. The victim of a serious offense ordinarily should be consulted by a representative of the unit concerned to obtain the victim's views about a decision not to prefer charges; dismissal of charges; pretrial restraint; negotiations for pretrial restraint; and negotiations for a pretrial agreement. Consultation may be limited when justified by the circumstances, such as to avoid endangering the safety of a victim or

a witness, jeopardizing an ongoing investigation, disclosing classified or privileged information, or unduly delaying the disposition of an offense. Although the victim's views should be considered, nothing limits the responsibility and authority of appropriate officials to take such action as they deem appropriate in the interest of good order and discipline and preventing service-discrediting conduct.

d. A victim's property held for evidence should be safeguarded and returned as expeditiously as possible. Victims who desire the return of property should contact the agency holding the evidence. If the property is not released, victims may contact the Military Justice Office (3115).

e. The Military Justice Officer and Family Services Officer are available to assist commanders in providing assistance to crime victims.

13. Initial Disposition. R.C.M. 306 provides guidelines for appropriate options regarding a reported offense. Normally, any commander may take action with respect to a report of an offense, but a superior commander may withhold that authority in a given case.

a. Factors. Allegations should be promptly resolved at the lowest appropriate level. Factors that the commander should consider, when known, include:

- (1) Character and military service of the accused.
- (2) Nature of and circumstances surrounding the offense and extent of the harm caused by the offense, including the offense's effect on morale, health, safety, welfare, and discipline.
- (3) Appropriateness of the authorized punishment to the particular accused or offense.
- (4) Possible improper motives of the accuser.
- (5) Reluctance of the victim or others to testify.
- (6) Cooperation of the accused in the apprehension or conviction of others.
- (7) Availability and likelihood of prosecution of the same (or similar) and related charges against the accused by another jurisdiction.
- (8) Availability and admissibility of evidence.
- (9) Existence of jurisdiction over the accused and the offense.
- (10) Other likely issues.

b. Commander's Options in Dealing with Disciplinary Matters

- (1) Take no action (this does not bar later action if circumstances warrant).
- (2) Take or recommend administrative action (see this Manual, paragraph 4007).
- (3) Impose (or recommend that a senior commander impose) nonjudicial punishment (see this Manual, paragraph 4009).
- (4) Charges:
 - (a) Prefer charges.
 - (b) Dismiss charges.
 - (c) Forward charges to another commander (superior or subordinate).
 - (d) Refer to Summary Court-Martial, Special Court-Martial, Article 32 investigation or General Court-Martial.

4006. PSYCHIATRIC EVALUATIONS. See R.C.M. 909 for information regarding general legal aspects of mental capacity. R.C.M. 706 contains the procedures for psychiatric consultations and evaluations. (See paragraph 4005.2 of this Manual for information regarding competence for duty examinations).

4007. ADMINISTRATIVE ACTION. Commanders and unit Legal Services Officers must review each case of alleged criminal misconduct to determine whether administrative action is appropriate in addition (or as an alternative) to disciplinary action. See R.C.M. 306(c)2 and JAGMAN 0111. Examples include:

1. Victim Compensation

a. Restitution. Consideration should be given to suspending all or part of any punishment if the accused makes restitution to the victim. This might appropriately be included in a pretrial agreement, or imposed as a condition of probationary suspension of court-martial sentence or nonjudicial punishment. In a limited number of cases involving loss or damage of property due to riotous conduct, involuntary restitution under Article 139, UCMJ and JAGMAN, Chapter X is possible. For further information, see paragraph 4005.10 of this Manual and consult the Military Justice Officer, extension 3115.

b. Claims. Each case of reported crime should be reviewed to determine whether the victim may file a claim against the government for compensation. The most common cases involve barracks larceny and vandalism to automobiles, covered by JAGMAN 2103(a) and 2103(i), respectively. For further information, consult the Legal Administrative Officer, extension 3115.

2. Administrative Discharge Processing. Each case involving an alleged violation of the UCMJ should be reviewed to determine whether the accused should be counselled or processed for administrative discharge. (See Chapter 6 of MCO P1900.16C, (MARCORSEPMAN)). (See also this Manual, paragraph 9003).

3. Revoking Depot Driving Privileges. Revocation of Depot driving privileges may be appropriate when an automobile has been used in the commission of an offense, e.g., as a hiding place or transport for illegal drugs. See the current editions of Depo 5560.11 and MCO 5110.1 for more information.

4. Administrative Withholding of Privileges. Commanders are expected to use non-punitive measures, including administrative withholding of privileges, not extending to deprivation of normal liberty, in furthering the effectiveness of their commands. These measures may include temporary withholding of club, exchange, commissary, and theater privileges, depending on the nature of the disciplinary infraction. See R.C.M. 306(c)(2); MCM, Part V, paragraph 1g (1984); and JAGMAN 0111c).

5. Extra Military Instruction (EMI). Commanding officers may assign EMI for any military duty which a member is deficient. EMI will be used to correct deficient performance of duty, not to punish. JAGMAN 0111b prescribes the following guidelines:

- a. Normally not conducted for more than two hours per day.
- b. May be conducted at a reasonable time outside normal working hours.
- c. Will not be conducted for a period longer than necessary to correct the deficiency for which assigned.
- d. Will not be conducted on member's sabbath.
- e. Will not be used as a device for depriving a member of liberty to which entitled. Liberty may commence upon completion of EMI.
- f. EMI during normal working hours may be assigned by any superior.
- g. EMI after normal working hours may be assigned only by commanding officers or officers in charge. (This authority may be delegated.)

6. Nonpunitive Censure. This is not a punishment. It may be issued either orally or in writing. It is private in nature, and may not be forwarded to Headquarters, U. S. Marine Corps, quoted or appended to fitness reports, included in investigative reports, or otherwise included in official departmental records of the recipient. A sample is provided in JAGMAN A-1-a. (See also JAGMAN 011d).

7. Vehicle Seizure by the Drug Enforcement Administration (DEA). DEA may seize and forfeit to the U. S. Government, any vehicle which has been used to facilitate transportation, concealment, possession, or sale of drugs. As a practical matter, DEA does not normally seize vehicles in which "personal use" quantities (small amounts) of drugs are found. Vehicle seizure and forfeiture activities are intended to be directed at drug traffickers, not mere users. All requests for vehicle seizure should be made through NIS, after consultation with the Military Justice Officer, extension 3115.

8. Internal Security Act of 1950 (50 U.S.C. 797). The Internal Security Act provides that violation of safety or security regulations governing federal property may make a person liable to a fine not to exceed \$5,000 or to imprisonment not to exceed one year, or both.

9. Bar Orders. In consultation with the Assistant Chief of Staff, SJA, commanding officers will fully review each case of a Marine being separated punitively or under conditions other than honorable. The commander should determine whether the separation is predicated upon conduct which is a clear threat to peace or security of the Depot. If so, the commander should recommend to the Commanding General that the person be given a bar order. Civilians who represent a clear threat to the peace or security of the Depot may also be given a bar order. Violation of a bar order will render the person subject to the penalties of 18 U.S.C. 1382, which include a fine of not more than \$500.00 or imprisonment of not more than six months, or both. For additional information see paragraph 7011 of this Manual.

4008. OTHER REPORTS

1. Report of Investigation of Suspected Misconduct of an Officer (Report Symbol MCRD 1621-04). Upon receipt of information alleging officer misconduct, either military or civil, a report shall be made telephonically to the Assistant Chief of Staff, SJA, extension 3115. The report should include all available information pertaining to the alleged offense, and should be followed by letter as soon as practicable. See paragraph 4005.1 of this Manual.

2. Report of Recruit Allegations

a. Immediately upon a report of alleged assaults, financial dealings, hazing, and/or maltreatment of recruit personnel by a drill instructor or other member of this Command, the company commander of the accused shall appoint an investigating officer or preliminary inquiry officer to determine the circumstances surrounding the alleged offense. The investigation shall be completed within five working days after the initial receipt of the report of the alleged offense and forwarded to the officer exercising Special Court-Martial jurisdiction. If the preliminary inquiry or investigation cannot be forwarded within the time prescribed, the officer exercising Special Court-Martial jurisdiction shall be notified of the reasons for the delay in submission.

b. Within five working days after receipt of the preliminary inquiry or investigation, the officer exercising Special Court-Martial jurisdiction shall, if practicable, make a determination as to the disposition of the alleged offenses.

c. If the allegation is confirmed, i.e., there is sufficient evidence to warrant a conclusion that the incident did occur, the preliminary inquiry or investigation shall be expeditiously forwarded, via the chain of command, to the Commanding General (Assistant Chief of Staff, SJA) together with a statement of the administrative and/or disciplinary action taken, contemplated, and/or recommended.

d. Expeditious processing of these preliminary inquiries or investigations is essential to ensure proper administrative and/or disciplinary action, if warranted.

3. Drill Instructor Disciplinary Report (Report Symbol MCRD 1620-2). The commanding officers of each battalion within the Recruit Training Regiment will submit the Drill Instructor Disciplinary Report monthly, utilizing MCRD Form 5812/1. The report shall be submitted via the Commanding Officer, Recruit Training Regiment to reach this Headquarters (Assistant Chief of Staff, G-2/3) no later than the fifth of the month. The following instructions are applicable to the completion of the Report Form 5812/1:

- a. The first three columns are self-explanatory.
- b. A brief description of the circumstances of each alleged offense or charges and specifications will be given in the fourth column.
- c. The fifth column will initially report if the drill instructor was or was not relieved of duties pending completion of the investigation. Any change in the drill instructor's status will thereafter be shown including the date the drill instructor was permanently relieved or returned to duty.

4. Publication of Results of Trial by Court-Martial and Nonjudicial Punishment (Report Symbol MCRD 1620-4)

a. The Commanding Officers of Headquarters and Service Battalion, Recruit Training Regiment, and Weapons Training Battalion will submit reports of punishment imposed in their units at all levels, providing the forum at which punishment was imposed (i.e., NJP, SCM, SPCM or GCM), the date of imposition, name, rank, offense, and punishment or sentence imposed. Punishment imposed on recruits should not be included in these reports.

b. The reports will be submitted semimonthly to cover the periods of the 1st through the 15th of the month, and the 15th through the end of the month.

c. Reports must arrive in the Office of the Staff Judge Advocate within five working days after the end of the reporting period.

d. The Assistant Chief of Staff, SJA will prepare a Depot Bulletin on a semi-monthly basis publishing a consolidation of these reports.

e. Commanding officers may read the Depot Bulletin required by subparagraph 4008.5d above, at unit formations, all hands meetings, and by posting on unit bulletin boards. See paragraph 5009 of this Manual.

5. Monthly Recruiter Disciplinary Report (Report Symbol MCRD 1130-10). The Monthly Recruiter Disciplinary Report shall be submitted by the Directors of the 8th, 9th, and 12th Marine Corps Districts to arrive at this Headquarters (Assistant Chief of Staff, SJA), with a copy to the Assistant Chief of Staff, Recruiting, no later than the tenth of each month. The report shall contain all actions taken during the preceding month and include as a minimum the following information:

- a. Name, rank, and SSN of recruiter.
- b. Location (USMC-RS).
- c. Offense (Article of Code violated).
- d. Factual description of the allegation, including name and SSN of enlisted applicant, where applicable.
- e. Disposition (NJP, SCM, etc.).
- f. Punishment (if any).
- g. Status of case (under investigation, appeal pending, completed, etc.).
- h. Status of recruiter (relieved pending investigation, letter to CMC voiding MOS, etc.).

6. Incidents Involving Foreign Nationals who are Members of the Armed Forces. The current edition of SECNAVINST 5820.16 requires notification of foreign consular officers when any servicemember, who is a foreign national, is apprehended by military authorities under circumstances likely to result in confinement or trial by court-martial within the United States. When these circumstances arise, the member's commanding officer will report the relevant information to the Military Justice Officer, extension 3115, who will prepare the consular notification.

7. Miscellaneous Reports. A matter which is the subject of preliminary inquiry may also be within the category of incidents which are required to be reported to higher authority. See the current editions of:

- a. MCO 5740.2 (Incidents of Concern to National Command Authority) which includes reporting racial or ethnic incidents;
- b. SECNAVINST 5500.4 (Missing, Lost, Stolen, or Recovered Government Property);
- c. MCO 5500.6 (Accidental Discharge of a Weapon);
- d. OPNAVINST 5112.1 (Postal Incidents); and
- e. MCO P11000.11 (Fire Reports and Investigating Procedures).

4009. NONJUDICIAL PUNISHMENT (NJP)

1. Preliminary Steps. Commanding officers may impose NJP on members of their command for minor offenses only. See MCM, Part V (1984), and R.C.M. 306 for guidelines for what constitutes a minor offense. UCMJ, Article 15, does not preclude or limit non-punitive measures that a commanding officer or an officer in charge is authorized and expected to use to further the efficiency of his command. Nonpunitive measures include administrative admonitions, criticisms, censures, reproofs, rebukes, withholding of privileges, and other measures not intended as punishment. (See JAGMAN 0111 and this Manual, paragraph 4007). Prior to imposition of NJP on enlisted personnel, the following must be accomplished:

- a. Prepare a unit punishment sheet for enlisted members in accordance with MCO p5800.8B (LEGADMINMAN), paragraph 2007 and include racial/ethnic indicator codes as prescribed in the current edition of MCO P1080.20. (For officer NJP, see this Manual, paragraph 4009.5 below.)
- b. Notify the offender in accordance with JAGMAN 0104 and MCM, Part V, paragraph 4 (1984), by completing MCRD Form 5811/10.
- c. If the commanding officer wants the record of punishment to be admissible in a subsequent trial, offer to refer the accused to the Chief Defense Counsel for pre-NJP counselling by a judge advocate. Absent a record of such counselling, the record of punishment will be inadmissible at a subsequent court-martial. However, this is the only sanction for failure to provide an accused with pre-NJP counselling. AN ACCUSED HAS NO ABSOLUTE RIGHT TO CONSULT WITH COUNSEL PRIOR TO NJP.

2. Procedural Guide. A suggested NJP Hearing Guide is contained on MCRD Form 5811/16. (A copy may be obtained by calling extension 3115). A summarized record of the office hours shall be maintained by using MCRD Form 5811/16 and attached to the completed Unit Punishment Book form. This summarized record may be prepared by the commanding officer who imposed the punishment, or by anyone else who was present.

NOTE: Paragraphs 4c(2) and 4d of MCM, Part V (1984) provide that no hearing need be held for NJP when the accused waives a hearing or when NJP is based on an investigative report in which the accused was a party. Nevertheless, it is recommended that a NJP hearing be held in every case: "Office Hours" is a longstanding custom of the U. S. Marine Corps. The benefits and leadership attendant to a personal appearance before the commanding officer are incalculable.

3. Suspension, Mitigation, Remission, and Setting Aside

a. Commanding officers and officers in charge or their successors in command, as well as officers acting on appeals of NJP, may suspend, remit, or mitigate part or all of the unexecuted portion of the punishment imposed. Also, any punishment may be set aside in whole or in part, whether executed or unexecuted, and all rights, property, and privileges may be restored to the accused. (See MCM, Part V, paragraph 6 (1984)).

b. Officers who contemplate mitigation are encouraged to consult the Military Justice Officer for legal implications, and to consult the Disbursing Officer (ext. 3443) for administrative implementation of the contemplated action.

c. A formal hearing is not required to vacate a suspended NJP. However, if the suspended punishment is set forth in UCMJ, Article 15(e)(1) through (7), the accused should, unless impracticable, be given an opportunity to appear before the officer authorized to vacate the suspension to rebut adverse information upon which the vacation is to be based. Commanding officers are encouraged to give the accused an opportunity to a hearing prior to vacating any suspended punishment. (See MCM, Part V, paragraph 6a(4) (1984)).

4. NJP Appeals. After imposition of NJP, the accused will be advised of the right to appeal the punishment imposed under MCM, Part V, paragraph 7 (1984) by completing MCRD Form 5811/12. (See also JAGMAN 0108, 0109, and 0110).

a. Appeals must be submitted in writing, and within five days of imposition, to the next superior in the chain of command above the officer who imposed the punishment. All punishment awarded at NJP, unless suspended, takes effect on the date imposed. Exception: When an appeal is submitted, if the service member so requests, the unexecuted punishment involving restraint or extra duty shall be stayed until action is taken, if there is delay in taking action beyond five days. See MCM, Part V, paragraph 7d (1984). AN ACCUSED WHO INDICATES HIS INTENT TO SUBMIT AN APPEAL NEED NOT BE GIVEN THE ENTIRE FIVE DAY PERIOD TO PREPARE THE APPEAL. HE MAY, FOR EXAMPLE, BE RELIEVED OF OTHER DUTIES, BE GIVEN PAPER, A PEN, AND BE ORDERED TO SUBMIT THE APPEAL FORTHWITH.

b. If the punishment includes any punishment listed in UCMJ, Article 15e(1) through (7), the appeal must be forwarded to the Assistant Chief of Staff, SJA for review by a judge advocate. (See MCM, Part V, paragraph 7e (1984)).

5. Officer NJP. The Commanding General (Assistant Chief of Staff, SJA) will be notified prior to any subordinate commander imposing NJP on an officer of this Command.

a. In lieu of using the Unit Punishment Book for officer NJP, the officer should be advised of those matters contained in Figure 4-1 or 4-2 as appropriate. All correspondence in this regard will be marked "For Official Use Only."

b. The procedures for imposing NJP upon an officer are contained in JAGMAN 0101-0112; MCO P5800.8B (LEGADMINMAN), Chapter 3; and MCM, Part V (1984).

(1) When NJP is contemplated on the basis of the results of a formal fact-finding body, and the officer was accorded the rights of a party for the act or omission charged, the officer should be advised of the matters set forth in Figure 4-1. NJP may then be imposed without further proceedings.

(2) When NJP is contemplated on the basis of information not the subject of a formal fact-finding body, or the officer concerned was not afforded the rights of a party with respect to the act or omission charged, the officer should be advised of the matters set forth in Figure 4-2. A hearing may then be held under the procedures set forth in JAGMAN 0101-0107 and MCM, Part V (1984).

(3) In either event described in paragraph 4009.5b(1) and (2) above, the decision of which procedure to follow is within the sole discretion of the officer who contemplates imposing the punishment.

c. When a request for Commanding General's NJP on an officer is contemplated, afford the officer all of the requisite rights, and forward a report to include the alleged offenses, available evidence, and Officer Qualification Record (OQR) to the Commanding General (Attn: Assistant Chief of Staff, SJA). (See Figure 4-3).

d. A report of officer NJP must be made to the Commandant of the Marine Corps (Code JAS) via the Commanding General (Assistant Chief of Staff, SJA) (Report Symbol EXEMPT). Prior to forwarding the report, the officer concerned should complete the statement contained in Figure 4-4. (See MCO P5800.8B (LEGADMINMAN), paragraph 3001.6).

6. Publishing Results of NJP. NJP results may be published at unit formations (and on bulletin boards) within the period of one month after imposing punishment. The name and grade of person punished, offenses, and the commanding officer's disposition of the case may be published. The Military Justice Officer, extension 3115, should be consulted for additional information concerning publication of NJP results. Additionally, the results of all disciplinary action taken against members of this Command which result in punishment being imposed will be published in accordance with the paragraph 4008.5 of this Manual.

7. Discharge Counselling. In accordance with MCO P1900.16C (MARCORSEPMAN), paragraph 6105.3, the commanding officer should normally counsel members who receive NJP. (See also paragraph 9002 of this Manual).

4010. REFERRING CASES TO TRIAL. When a commanding officer thinks that trial by court-martial may be appropriate, he should consult the Assistant Chief of Staff, SJA for advice. (Normally, he should forward the completed preliminary inquiry to the officer exercising court-martial jurisdiction over the accused). If the convening authority decides to refer the case to trial by court-martial, a Request for Legal Services (RLS) MCRD 5811/8 will be prepared. The RLS will be forwarded to the Military Justice Officer, Building 12. Disposition of particular types of cases is discussed in the following sections. To arrange for pretrial psychiatric evaluations, consult the Military Justice Officer, Building 12, extension 3115. (See also R.C.M. 706).

1. Legal Services Provided by the Office of the Assistant Chief of Staff, SJA

a. The Assistant Chief of Staff, SJA shall provide the full range of legal services desired by commanding officers, including, but not limited, to legal services listed below. Court-martial convening authorities are encouraged to consult the Assistant Chief of Staff, SJA regarding all legal matters.

(1) Prepare and type charge sheets for all courts-martial.

(2) Provide qualified trial counsel, defense counsel, and court reporters; obtain detail of a military judge for all special and general courts-martial, and if practicable, provide an officer to conduct UCMJ, Article 32 pretrial investigations.

(3) Prepare all Summary, Special and General Court-Martial appointing orders (and modifications) for signature of the requesting convening authority, using the officers and, if requested in writing by the accused, enlisted personnel designated by the convening authority.

(4) Prepare appointing orders for UCMJ, Article 32 pretrial investigations for signature by the convening authority.

(5) Provide administrative personnel to record and type the record of all Special and General Courts-Martial and proceedings of UCMJ, Article 32 pretrial investigations.

(6) Provide courtroom facilities for all Summary, Special, and General Courts-Martial.

(7) Arrange for authentication of the record of trial by the military judge, and deliver the SJA's recommendations and record of trial to the convening authority for his action.

(8) Prepare the convening authority's action as directed.

(9) Review all courts-martial.

(10) Prepare and distribute all court-martial orders.

b. The officer exercising court-martial jurisdiction over the accused should consider the desirability of trying the case at MCRD, San Diego (as would normally be the case), vice some other geographical location, i.e., the place of the offense, the locus of the witnesses, etc. If it is demonstrably advantageous and less expensive to try the case in some place other than MCRD, San Diego, the Assistant Chief of Staff, SJA will provide a trial-defense team, including court reporter, to travel to the distant location to furnish the necessary support. In this regard, the cost of travel and per diem will be charged to the operating budget of the convening authority. See the current edition of MCO 5813.2. Additionally, the Assistant Chief of Staff, SJA will arrange for the presence of a military judge at the appropriate time and place to try the case.

c. The support agreement between the Commanding General, MCRD and the Commanding General, MCB, Camp Pendleton provides that the Assistant Chief of Staff, SJA, MCB, Camp Pendleton provides trial and defense counsel for Special Courts-Martial and Article 32, UCMJ investigations convened by the Commanding Officer, Weapons Training Battalion. However, the Commanding Officer of Weapons Training Battalion will consult the Assistant Chief of Staff, SJA (Chief Government Counsel) prior to requesting legal services for trial by Special Court-Martial or an Article 32, UCMJ investigation from the Assistant Chief of Staff, SJA, MCB, Camp Pendleton.

2. Procedure

a. When the Special Court-Martial convening authority determines that trial by court-martial or an Article 32 pretrial investigation is warranted, the following should be done:

(1) Prepare a Request for Legal Services MCRD Form 5811/8.

(2) Include the report of the preliminary inquiry and the SRB of the accused as enclosures to the RLS. For a Summary Court-Martial, the name of the Summary Court-martial officer must be included. For a Special Court-Martial, the names of the members must be included. For an UCMJ, Article 32 investigation, the name of the investigating officer (or a request that a judge advocate act as the investigating officer) must be included.

(a) The preliminary inquiry must contain sufficient information to prepare charges and identify witnesses and victims. Attach copies of orders allegedly violated and any statements of witnesses.

(b) If the permanent SRB is not available, prepare and forward a temporary SRB.

(3) The Military Justice Officer shall ensure that the charge sheet, including the appropriate charges, and the proper convening order or Article 32 appointing order are prepared and returned to the convening authority for signature. The Military Justice Officer shall also ascertain which officers will serve as military judge, defense counsel, trial or government counsel, Summary Court-Martial officer, or investigating officer, as applicable.

(4) Upon completion of the action in subparagraph 4010.2a(3), above, if the convening authority has ordered an UCMJ, Article 32 pretrial investigation or a Special Court-Martial, the documents shall be returned to the Military Justice Officer. If a Summary Court-Martial has been ordered, the documents shall be forwarded to the Summary Court-Martial officer.

3. Speedy Trial. Once charges have been preferred (and the accused notified thereof) or any restraints have been placed on the personal liberty of the accused, the speedy trial clock is started and the government has 120 days to get the accused to trial. If the accused is not brought to trial within 120 days of either of the above events, absent unusual circumstances, the charges must be dismissed. Accordingly, whenever a court-martial is contemplated and the potential accused has had any restraint placed on his liberty, the Assistant Chief of Staff, SJA is to be notified of the suspected offense and the restraints on the accused, no matter how minor.

4011. SUMMARY COURTS-MARTIAL. See R.C.M. 1301, et seq.

1. Request for Legal Services. When the officer exercising court-martial jurisdiction decides to refer a case to a Summary Court-Martial, a Request for Legal Services to that effect may be submitted to the Military Justice Officer using MCRD Form 5811/8. The appropriate charges will be drafted by the Military Justice Division and returned. (See MCM, appendix 4 (1984)).

2. Referral. The officer exercising court-martial jurisdiction may refer the sworn charges to a Summary Court-Martial by completing block 14 of the charge sheet (See MCM, appendix 4 (1984)) and the appointing order (See MCM, appendix 6, paragraph b (1984)).

3. Procedural Guide. The Military Justice Officer will provide a procedure guide to the summary court officer. A guide is also contained in the MCM. (See MCM, appendix 9 (1984)).

4. Record of Trial. The Summary Court-Martial record of trial will be prepared per R.C.M. 1305 and a Summary Court-Martial checklist obtained from the Military Justice Officer. (See the Record of Trial by Summary Court-Martial, MCM, appendix 15 (1984)). In addition to the requirements of the MCM, 1984, the record of trial will contain a summary of evidence at trial. See the Summary Court-Martial checklist. Assistance concerning Summary Court-Martial procedures and records of trial preparation may be obtained from the Military Justice Officer, Building 12, extension 3115.

5. Post Trial. After trial, the accused may submit matters to the convening authority under R.C.M. 1306 and 1105. The officer exercising court-martial jurisdiction will complete the convening authority's action in block 13. (See Record of Trial by Summary Court-Martial, MCM, appendix 15 (1984)). The convening authority will then forward the case to the Review Officer, Building 12, for review under R.C.M. 1112 and 1306(c).

6. Counsel. If the commanding officer desires that the summary court-martial conviction be admissible in a subsequent trial, refer the accused to the Chief Defense Counsel for pre-Summary Court-Martial counselling by a judge advocate. Absent a record of such counselling, the Summary Court-Martial conviction will be inadmissible at any subsequent court-martial. However, this is the only sanction for failure to provide an accused with pre-Summary Court-Martial counselling. An accused has no absolute right to consult with counsel prior to Summary Court-Martial.

4012. SPECIAL COURTS-MARTIAL

1. Request for Legal Services. When the officer exercising Special Court-Martial jurisdiction decides to refer a case to trial by Special Court-Martial, forward a Request for Legal Services, MCRD Form 5811/8, to the Military Justice Officer for preparation of a charge sheet, assignment of trial and defense counsel, and preparation of a convening order.

2. Referral. Upon receipt of the sworn charges, the officer exercising Special Court-Martial jurisdiction may complete block 14 of the charge sheet referring the case to trial, and return the case to the Military Justice Officer for trial. (See paragraph 4015 of this Manual regarding bailiffs). (See also MCM, appendix 4 (1984) for a sample charge sheet).

3. Additional Charges. When an accused is suspected of having committed a new offense, not included in the original sworn charge, the officer exercising Special Court-Martial jurisdiction may submit a new Request for Legal Services for an additional charge.

4013. ARTICLE 32 INVESTIGATIONS AND GENERAL COURTS-MARTIAL

1. Request for Legal Services. When an accused is alleged to have committed a serious offense, the officer exercising Special Court-Martial jurisdiction over the accused may submit a Request for Legal Services for a UCMJ, Article 32, pretrial investigation. Upon conclusion of the investigation, the report of investigation will be submitted to the convening authority. (See MCM, appendix 5 (1984)).

2. Referral Recommendation. If, in the opinion of the Article 32 convening authority, the case warrants trial by General Court-Martial, the convening authority may forward the charges and allied papers to the Commanding General (Attention: Assistant Chief of Staff, SJA) with a recommendation that the charges be referred to trial by General Court-Martial.

3. Pretrial Advice. Before a charge may be referred to a General Court-Martial, it shall be referred to the Assistant Chief of Staff, SJA, for consideration and advice under R.C.M. 406.

4014. ATTENDANCE OF OBSERVERS AT TRIALS. Commanding officers are encouraged to permit members of their commands to attend trials by Special and General Courts-Martial for professional education. In any case, commanding officers should assign one or more persons to observe trials by Special and General Courts-Martial involving members of their commands.

4015. COURT BAILIFFS. Commanding officers are required to provide a bailiff when a member of the unit is to be tried by Special or General Court-Martial. In advance of trial, trial counsel will notify the unit of the reporting date and time, and will specify the uniform. Bailiffs must become familiar with JAGMAN A-1-q before reporting for duty.

4016. ASSIGNMENT OF MEMBERS OF COURTS-MARTIAL. The Assistant Chief of Staff, G-1 coordinates nominations for members of courts-martial. Members of Special Courts-Martial or General Courts-Martial are selected by the convening authority. Nominees are furnished by organizations assigned to MCRD, San Diego on a pro-rata basis. Duty as a member of a court-martial takes precedence over all other duties. Before trial, the convening authority or the Assistant Chief of Staff, SJA may excuse a member under R.C.M. 505(c). Requests for excusal will be submitted via the assigned trial counsel.

4017. DISCLOSURE OF DISCIPLINARY INFORMATION TO THE PRESS OR OTHER MEDIA. No information that relates to disciplinary matters will be released by individuals or commands without authorization from the Assistant Chief of Staff, SJA, and then only by the Depot Public Affairs Officer (PAO). Navy Department policy regarding release of information pertaining to accused persons is set forth in JAGMAN 0134. Any inquiries requesting information concerning disciplinary proceedings shall be referred to PAO, extension 3141. The Review Officer is the special counsel for the PAO.

STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

F-O-R-M-A-T

(UNIT HEADING)

(File Code)
(Date)

FOR OFFICIAL USE ONLY

From: Commanding General/Officer
To: Individual Concerned

Subj: NOTIFICATION OF INTENT TO IMPOSE NONJUDICIAL PUNISHMENT

Ref: (a) MCM, Part V (1984)
(b) JAGMAN Chapter I, Part A

Encl: (1) Copy of formal fact-finding investigation

1. You are advised that it is my intent to impose punishment upon you under the Uniform Code of Military Justice, Article 15.
2. This punishment is being imposed pursuant to references (a) and (b). A hearing will not be conducted. The enclosure is a formal fact-finding investigation in which you were accorded the rights of a party respecting the charge against you.
3. You are advised that the offense(s) for which you will receive nonjudicial punishment is/are:
4. You are advised that you have the following rights in regard to the imposition of nonjudicial punishment:
 - a. You have a right to demand trial by court-martial in lieu of nonjudicial punishment.
 - b. You may submit, in writing, any matter in defense, extenuation, or mitigation.
 - c. A person punished under the authority of UCMJ, Article 15, who considers his punishment unjust or disproportionate to the offense may, through the proper channels, appeal to the next superior authority. Such an appeal must be made within five days following the imposition of punishment. Such an appeal must be in writing and may include your reasons for regarding the punishment as unjust or disproportionate.
5. You will indicate by return endorsement hereon, your understanding of the foregoing and return it within a reasonable period of time.

Signature

FOR OFFICIAL USE ONLY

STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

F-O-R-M-A-T

(UNIT HEADING)

(File Code)
(Date)

From: (Officer Concerned)
To: (Commanding General/Officer)

Subj: ACKNOWLEDGEMENT OF ADVICE OF RIGHTS

1. I hereby acknowledge my understanding of the advice stated above and my right to demand trial by court-martial in lieu of nonjudicial punishment. I do not desire to demand trial by court-martial and am willing to accept punishment under UCMJ, Article 15.

Signature of accused

Date

Witness

FOR OFFICIAL USE ONLY

Figure 4-1.--Format of Notification of Intent to Impose NJP--Continued.

STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

F-O-R-M-A-T

(UNIT HEADING)

(File Code)
(Date)

FOR OFFICIAL USE ONLY

From: Commanding General/Officer
To: (Officer Concerned)

Subj: NOTIFICATION OF INTENT TO IMPOSE NONJUDICIAL PUNISHMENT

Ref: (a) MCM (1984)

1. You are hereby notified that it is my intent to impose nonjudicial punishment upon you in accordance with the reference, and that prior to the imposition of nonjudicial punishment you are advised of the following:

a. The provisions of Uniform Code of Military Justice, Article 31(b), are as follows:

(1) You are accused of: (set for summary of offense(s)).

(2) You have the right not to make any statement concerning this/these offense(s).

(3) Any statement you do make may be used against you during these proceedings or in trial by court-martial.

b. You may consult with a lawyer, either a civilian lawyer retained by you at your own expense, or a judge advocate at no expense to you, if one is reasonably available.

c. That you will receive a hearing at which you will be accorded the following rights:

(1) To be present before the officer conducting the hearing.

(2) To be advised of the offense(s) of which you are suspected.

(3) That you will not be compelled to make any statement regarding the offense(s) charged and that any statement you do make can be used against you.

(4) To be present during the presentation of all information against you, including testimony of witnesses in person or by receipt of their written statements. Copies of any written statements will be furnished to you.

(5) To have made available to you for inspection, all items of information in the nature of physical or documentary evidence to be considered by the officer conducting the hearing.

(6) To present to the officer conducting the proceedings appropriate matters in mitigation, extenuation, or defense of the alleged charges. Matters in mitigation do not constitute a defense but do reduce the degree of moral culpability. Such a matter might be a fine military record, either previous to or subsequent to the alleged offenses. Matters in extenuation are matters which render a crime less aggravated or reprehensible than it would otherwise be but, again, such matters do not constitute a defense. A matter offered in defense is offered as a reason in law or fact why you should not be found guilty of the charges alleged.

Figure 4-2.--Format of Notification of Intent to Impose NJP

STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

(7) To be accompanied at the hearing by a personal representative to speak on your behalf. The command has no obligation to provide such a personal representative and it is your obligation to obtain and arrange for the presence of such a personal representative if you wish one. The personal representative need not be a lawyer.

2. You are advised that if punishment is imposed under the UCMJ, Article 15, you have the right to appeal to higher authority, within five days after the punishment is imposed, if you consider the punishment unjust or disproportionate to the offense for which it is imposed.

3. You have the right to demand trial by court-martial in lieu of nonjudicial punishment.

4. You will indicate by return endorsement your understanding of the foregoing and return it within a reasonable period of time.

Signature

Figure 4-2.--Format of Notification of Intent to Impose NJP--Continued.

STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

F-O-R-M-A-T

(UNIT HEADING)

(File Code)
(Date)

From: (Officer Concerned)
To: Commanding General/Officer

Subj: ACKNOWLEDGEMENT OF ADVICE OF RIGHTS

1. I hereby acknowledge my understanding of the advice stated above and my right to demand trial by court-martial in lieu of nonjudicial punishment; I (do not) desire to demand trial by court-martial and am (not) willing to accept punishment under the UCMJ, Article 15.

Signature of accused

Date

Witness

FOR OFFICIAL USE ONLY

Figure 4-2.--Format of Notification of Intent to Impose NJP--Continued.

STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

F-O-R-M-A-T

(UNIT HEADING)

(File Code)
(Date)

From: Commanding Officer
To: Commanding General (Assistant Chief of Staff, Staff Judge Advocate)
Subj: DISCIPLINARY ACTION: CASE OF (Grade, Name, SSN/MOS, component and unit of officer)

Ref: (a) UCMJ, Article 15
(b) DepO P5800.13A

Encl: (1) Advice regarding rights
(2) Preliminary inquiry

1. In accordance with references (a) and (b), it is requested that the Commanding General exercise UCMJ, Article 15 Jurisdiction over the offense(s) listed below.

2. (Grade/Name of Offender) appeared before me on _____ at a nonjudicial punishment hearing. Subject named officer was advised of all his (her) rights under JAGMAN, 0104a(3), and the fact that, should nonjudicial punishment be awarded, a report will be forwarded to his (her) permanent record at Headquarters Marine Corps.

3. Enclosure (2) contains the evidence relating to the offense listed below.

(Summarize offenses and list UCMJ Article violated.)

Figure 4-3.--Format for Disciplinary Action

STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

F-O-R-M-A-T

(UNIT HEADING)

(File Code)
(Date)

FOR OFFICIAL USE ONLY

From: (Officer Concerned)
To: (Commanding Officer)

Subj: REPORT OF NONJUDICIAL PUNISHMENT

Ref: (a) U. S. Navy Regulations, Article 1110 (1973)
(b) LEGADMINMAN

1. I have been afforded the opportunity to read the report of nonjudicial punishment imposed upon me on (DATE OF NJP) and all documents related thereto.
2. I understand that the report of nonjudicial punishment will become a permanent part of my official military personnel file at Headquarters, U. S. Marine Corps.
3. In accordance with references (a) and (b), I desire (to not submit a further statement) or (to submit a statement as follows:)

(SIGNATURE OF OFFICER CONCERNED)

FOR OFFICIAL USE ONLY

Figure 4-4.--Format of Officer's Statement of Understanding

STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

CHAPTER 5

POST COURT-MARTIAL PROCESSING

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STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

CHAPTER 5

POST COURT-MARTIAL PROCESSING

5001. GENERAL. Post-trial processing of courts-martial is extremely important and is to be completed on an "as soon as possible" basis. Confinement processing, appellate review, rehabilitation, execution of sentences, suspension of sentences, and vacation of suspended sentences are frequently time-sensitive and must be expedited in the interests of the orderly administration of justice and discipline.

5002. NOTIFICATION OF RESULTS OF TRIAL. Upon conclusion of a court-martial, the trial counsel will notify the convening authority and the immediate commander, if different, and the PAO, of the results of trial. The notification will include the findings, sentence, and whether a pretrial agreement exists. Additionally, the court reporter will prepare MCRD Form 5812/1 to record the results of trial.

5003. AUTOMATIC REDUCTION. (See UCMJ, Article 58a(a), and JAGMAN 0145a(7).)

1. Reduction to the lowest enlisted pay grade will be effected automatically when the sentence, as approved by the convening authority, includes (whether or not suspended) either a punitive discharge, confinement in excess of 90 days (if sentence awarded in days), or confinement in excess of three months (if sentence awarded in other than days).

2. The convening authority may elect to retain the accused in the pay grade held at the time of trial (or any intermediate pay grade) and suspend the (remainder of the) automatic reduction to E-1. Additionally, the convening authority may direct that the accused serve in the pay grade E-1 while in confinement, but return the accused to the pay grade held at the time of trial (or any intermediate pay grade) upon release from confinement. For information, consult the Review Officer, extension 3115.

5004. CONFINEMENT AND DEFERMENT

1. When an accused is sentenced to confinement, a decision whether the individual should be placed into confinement must be made. By this Manual, the Commanding General's authority is delegated to the trial counsel (See R.C.M. 1101(b)(2) and the current edition of DepO 5800.10). If the accused is ordered into confinement, immediate steps must be taken to confine the person. It must be borne in mind that a sentence to confinement begins to run on the date the sentence is announced, unless the sentence is deferred. Only the convening authority may defer confinement. This authority may not be delegated. (See R.C.M. 1101(c)). Note also that when taking action on a deferment request, a denial is required to be set forth by the convening authority in writing; approval is not. The Military Justice Officer shall be consulted for assistance in replying to a deferment request, since there are several technical requirements of law that must be satisfied in the convening authority's response. Additionally, the Review Officer must be notified of the deferment request and, once action is taken by the convening authority, the request and response must be forwarded to the Review Officer for inclusion in the record of trial. (See R.C.M. 1103(b)(3)D).

2. When an accused is tried and sentenced to confinement at hard labor, a chaser from the prisoner's command will escort the prisoner to the Base Brig, MCB, Camp Pendleton or other place of confinement as appropriate. The Military Police Division, extension 3601/3/4 will provide transportation for the MCRD prisoners to Camp Pendleton. (See paragraph 3002.5 of this Manual and the current edition of DepO 5800.10 as to required confinement orders, physical exams, and required clothing for confinees).

5005. SJA RECOMMENDATION

1. Before the convening authority takes action on a record of trial by General Court-Martial, the Assistant Chief of Staff, SJA will forward a recommendation, as required by RCM 1106. The recommendation shall be submitted directly to the convening authority, and not via the general staff. See paragraph 1329.c of FMFM 3-1 and United States v. Walsh, 11 M.J. 858 (1981).

2. The Assistant Chief of Staff, SJA will provide the recommendation required by R.C.M. 1106(c)(2).

5006. CONVENING AUTHORITIES' ACTIONS ON SPECIAL COURTS-MARTIAL

1. All requests for clemency submitted to a convening authority by an accused or counsel must be preserved. The convening authority must consider the request for clemency in acting upon the case, and should state in his action that he has considered the request. (See R.C.M. 1107(b)(3)(A)(iii)).

2. The Review Officer will prepare the convening authority's initial action in accordance with the convening authority's decision and the law. Convening authorities are not to take action on the record unless the Review Officer has reviewed the form of the proposed action for legal sufficiency. The prepared action will then be forwarded to the convening authority for signature. The signed convening authority's initial action will then be returned to the Review officer.

5007. REVIEW. The Review Officer will conduct the review when required by R.C.M.

1112. When review is required by higher authority, the Review Officer will forward the case for review required by R.C.M. 1201.

5008. PROGRESS REPORTS

1. The current edition of SECNAVINST 5815.3 provides detailed guidance concerning submission of prisoner progress reports, psychiatric evaluations, and requests for restoration, clemency, and waiver of restoration. Progress reports will be forwarded via the Assistant Chief of Staff, SJA.

2. For confinees, progress reports from the Base Brig, MCB, Camp Pendleton will be submitted by the commanding officer of the correctional facility.

5009. PUBLISHING RESULTS OF COURTS-MARTIAL. Commanding officers are encouraged to publish the results of courts-martial to their commands. Only results in which there are findings of guilty may be published. Announcement of the name of an accused, the offenses of which the accused was found guilty, and the sentence are appropriate. Entirely appropriate are announcements at unit formations and posting on unit bulletin boards. (See also paragraphs 4008.5 and 4009.6 of this Manual).

5010. VACATING SUSPENDED COURT-MARTIAL SENTENCES

1. Prior to the vacation proceedings of a suspended sentence of a Special or General Court-Martial, a Request for Legal Services, MCRD Form 5811/8, will be submitted and a defense counsel will be assigned to represent the probationer, when required under R.C.M. 1109.

2. The officer exercising Special Court-Martial jurisdiction over a probationer who has a suspended Special Court-Martial sentence that does not include a bad conduct discharge or who has a suspended Summary Court-Martial sentence may, after causing a hearing to be conducted per R.C.M. 1109 and the current edition of Depot Order 5800.10, vacate all or a portion of the suspended sentence and order it into execution. The probationer shall be accorded the same right to counsel at the hearing as he had at the court-martial which imposed the sentence. Procedures and forms are provided in the current edition of Depot Order 5800.10.

3. Prior to vacating any General Court-Martial sentence, or a suspended Special Court-Martial sentence which includes a bad conduct discharge, the officer with Special Court-Martial authority will personally conduct a hearing, required by R.C.M. 1109(d)(1) and forward the case to the General Court-Martial authority for decision. Again, the probationer shall be accorded the same right to counsel at the hearing as he had at the court-martial which imposed the sentence. Procedures and forms are provided in the current edition of Depot Order 5800.10.

4. If the General Court-Martial convening authority does not take the action required in this Manual, paragraph 5010.3, within seven days, then an Initial Review Officer's hearing will be caused to be conducted to review the propriety of confinement while

awaiting the General Court-Martial convening authority's decision (See R.C.M. 1109 and the current edition of Depot Order 5800.10).

5011. APPELLATE LEAVE

1. Paragraph 3025 of MCO P1050.3F provides for appellate leave while awaiting the decision of appellate review on court-martial sentences that include unsuspended punitive discharges and dismissals. There are two types of appellate leave: voluntary and involuntary. Appellate leave may be granted by the officer exercising General Court-Martial jurisdiction, providing the following requirements have been met:

a. The individual was sentenced to dismissal or punitive discharge; the dismissal or punitive discharge was not suspended; and there is no pretrial agreement that requires suspension of the dismissal or punitive discharge.

b. If the punitive discharge or dismissal has been approved by the officer exercising General Court-Martial jurisdiction over the individual, the accused is eligible for only involuntary appellate leave. If the punitive discharge has not yet been approved by the officer exercising General Court-Martial jurisdiction, the accused is eligible for only voluntary appellate leave. However, a request for appellate leave submitted by the accused after the officer exercising General Court-Martial jurisdiction has approved a dismissal or punitive discharge may be forwarded as a command request for involuntary leave if all prerequisites for involuntary appellate leave are satisfied.

c. There is no confinement remaining to be served. Any adjudged confinement must have been served, remitted, or deferred prior to commencement of appellate leave. If a portion of the confinement is suspended, the individual does not qualify for appellate leave.

d. The accused has either requested appellate leave in writing, or the command seeks to order the accused to involuntary appellate leave because the accused cannot be given useful duties and the accused's continued presence in the command is not in the best interest of the Marine Corps (e.g., the accused's continued presence is detrimental to good order, discipline, and proper administration; the accused is subject to substantial delay in the appellate review of a punitive discharge; or the accused is awaiting appellate review in a non-pay or materially diminished pay status).

e. For voluntary appellate leave, the accused has either waived clemency review, waived restoration to duty, or has requested and has been denied restoration to duty.

f. The waiver of clemency review, restoration, request for clemency, psychiatric evaluation, physical examination, power of attorney, purpose and scope of the Naval Discharge Review Board (NDRB) and Board for Correction of Naval Records (BCNR) and DD forms 1476 through 1479, as appropriate, have been completed in accordance with the current editions of SECNAVINST 5815.3, MCO P5800.8, MCO P1050.3, Depo P1900.6, and this Manual.

2. Paragraph 3025 of MCO P1050.3F also provides for leave awaiting administrative discharge. This leave does not apply to administrative discharge for expiration of enlistment or fulfillment of service obligation. Such leave may be granted by the officer exercising General Court-Martial jurisdiction providing the following requirements have been met:

a. All proceedings in the case necessary for execution of the discharge are completed, except for the action of the applicable discharge authority.

b. There are no additional proceedings necessary for execution of the discharge which require further action by the individual or the individual's physical presence at the command.

c. The General Court-Martial convening authority believes that current proceedings will result in the individual's discharge.

d. The individual has requested such leave in writing.

e. The requested leave is in the best interest of the Marine Corps.

3. When the requirements listed in paragraphs 5011.1a-f or 5011.2a-e of this Manual have been satisfied, the request of the accused or the command seeking appellate leave, accompanied by all appropriate allied papers, must be forwarded to the Commanding General (Attention: Assistant Chief of Staff, SJA) requesting issuance of appellate leave papers.

4. The commanding officer will sign the request for involuntary leave and in every case ensure that all required action is accomplished prior to commencement of appellate leave. Figure 5-1 provides a checklist for commands to use when preparing appellate leave correspondence. (See also the current edition of Depot Order P1900.6).

5. Personnel transferred to this command for the purpose of being placed on appellate leave will normally have in their possession appropriate documentation to reflect that all required actions have been accomplished prior to arrival at MCRD, San Diego. Should an individual in this category not have such documentation in his possession, consult the Assistant Staff Judge Advocate for Administrative Support, Building 12, extension 3115, for further processing information.

5012. COURT-MARTIAL REPORTS. As required by paragraph 0160 of the JAGMAN, the following reports will be submitted:

1. Court-Martial Case Report. The trial counsel is responsible for providing the military judge with the court-martial case report prior to trial.

2. Court-Martial Data Sheet. The Review Officer is responsible for completing and ensuring the Court-Martial Data Sheet is included in the record of trial prior to forwarding the record of trial to the Navy-Marine Corps Appellate Review Activity.

3. Criminal Activity, Disciplinary Infractions and Court-Martial Report and Addendum. The Assistant Chief of Staff, SJA is responsible for completing and submitting this report quarterly to the Judge Advocate General.

4. Supplemental Report and Addendum to the Criminal Activity, Disciplinary Infractions, and Court-Martial Report. Each Special Court-Martial convening authority will be responsible for submitting this report to the Assistant Chief of Staff, SJA by 15 January, 15 April, 15 July, and 15 October. This report will include the relevant information from all subordinate units under his control.

STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

F-O-R-M-A-T

(UNIT HEADING)

(File Code)
(Date)

APPELLATE LEAVE CHECKLIST/ACTION BRIEF

The below is a checklist of information required prior to granting appellate leave:

APPELLANT: _____

OFFENSE(S): _____

SENTENCE: _____

DATE & PLACE OF TRIAL: _____

YES NO

- () () Appellant has voluntarily requested appellate leave?
- () () Appellant is being ordered to involuntary appellate leave?
- () () Appellant has an unsuspended punitive discharge? (See Pretrial Agreement. If suspension agreed upon, check "No.")
- () () Was appellant awarded any sentence to confinement?
- () () If there is any confinement, has it been served, remitted, or deferred?
- () () Physical examination performed?
- () () Power of Attorney executed?
- () () Has the Purpose and Scope of the Navy Discharge Review Board and the Board for Correction of Naval Records advice form been executed?
- () () Appellant has waived Clemency Review by completing NAVSO 5815/4 (5-81)? (If "Yes", nothing more is required for appellate leave processing.)
- () () DD Forms 1476 through 1479 completed and correct?
- () () Psychiatric evaluation performed?
- () () Waiver of Restoration/Request for Clemency completed in appellant's own handwriting?

Figure 5-1.--Appellate Leave Checklist/Action Brief

STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

F-O-R-M-A-T

(File Code)
(Date)

() () Does appellant desire to be restored to duty?

() () Is the appellant qualified for restoration?

Based upon the foregoing, it is recommended that the appellate leave request be

() Approved

() Disapproved

Commanding Officer's Signature

Figure 5-1.--Appellate Leave Checklist/Action Brief--Continued.

STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

CHAPTER 6

MILITARY MAGISTRATE/INITIAL REVIEW OFFICER

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STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

CHAPTER 6

MILITARY MAGISTRATE/INITIAL REVIEW OFFICER

6001. GENERAL. This Manual assigns a Military Magistrate/Initial Review Officer for Marine Corps Recruit Depot, San Diego to hold impartial hearings in a variety of cases arising aboard the Depot. Additionally, this Manual gives procedural guidance for use of the Initial Review Officer at Camp Pendleton for hearings regarding confinement there.

6002. PRETRIAL CONFINEMENT AND VACATION OF SUSPENDED SENTENCE HEARINGS. The MCRD Initial Review Officer conducts hearings, when practicable, for members of this Command prior to confinement. When a member has been confined prior to the hearing, the MCB, Camp Pendleton Initial Review Officer will be requested to hold the hearing. Vacation of General Court-Martial and bad conduct discharge suspended sentences require a hearing by the Special Court-Martial authority personally. However, if the General Court-Martial authority has not made a decision as to whether to vacate suspension within seven days of confinement of the probationer, an Initial Review Officer will be requested to review the propriety of confinement (See the current edition of Depot Order 5800.10 and this Manual, Chapter 3). (See also the current edition of MCB, Camp Pendleton Order 5800.6.)

6003. BAR ORDER HEARINGS. When "Bar Order" (Order and Notice to Vacate) hearings are necessary, they are conducted by the MCRD Military Magistrate. See paragraph 7011 of this Manual.

6004. TRAFFIC VIOLATION HEARINGS. The MCRD Military Magistrate, and others as may be appointed by the Commanding General, hold hearings regarding alleged traffic violations in accordance with the current edition of Depot Order 5560.11. See paragraph 4007.3 of this Manual.

6005. JUVENILE MATTERS

1. The MCRD Military Magistrate, sitting as Juvenile Magistrate, conducts administrative hearings regarding criminal offenses allegedly committed by juvenile dependents aboard the Depot. The purpose of the hearings is to determine the truth of the allegation(s) against the juvenile, and to determine which administrative sanctions, if any, are appropriate.

2. The juvenile dependent will be accompanied to the hearing by his or her sponsor. The juvenile dependent will be afforded the following rights:

- a. The right to a fair and impartial hearing.
- b. The right to be represented by a civilian attorney provided at no expense to the U. S. Government.
- c. The right to review, prior to the hearing, the investigative report alleging the misconduct being considered by the Juvenile Magistrate.
- d. The right to confront and cross-examine reasonably available witnesses.
- e. The right to make a statement or remain silent.
- f. The right to present witnesses, if reasonably available.

3. Upon completion of the hearing, the Juvenile Magistrate will prepare a summary record of the hearing. The record will include a summary of the evidence presented, including testimony of witnesses. All favorable and unfavorable information presented, and the magistrate's reasoned resolution of disputed facts will be included in the record of the hearing.

4. The Juvenile Magistrate may take one or more of the following administrative actions:

- a. Place the juvenile on voluntary probation.
- b. Counsel and warn the juvenile dependent.
- c. Recommend that the juvenile dependent's Depot privileges be restricted. Restricted privileges may include, but are not limited to, Exchange, Theater, Special Services activities, and Depot driving privileges.
- d. Refer the charges to the San Diego County District Attorney or the Special Assistant U. S. Attorney for prosecution.
- e. Recommend an Order and Notice to Vacate the Depot.
- f. Other appropriate recommendations.

6006. OTHER ADMINISTRATIVE HEARINGS. The MCRD Military Magistrate conducts other administrative hearings as assigned by the Commanding General.

STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

CHAPTER 7

ADMINISTRATIVE LAW

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STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

CHAPTER 7

ADMINISTRATIVE LAW

7001. GENERAL. Administrative law regulates the functioning of government agencies, including the Department of the Navy and the U. S. Marine Corps. It includes, among other things, the law governing claims and suits for and against the government, redress of injuries to property, status and separation of officer and enlisted personnel, labor relations and equal employment opportunity law, environmental law, Ethics in Government Act and Standards of Conduct governing Navy Department personnel, and laws applicable to government information practices (Freedom of Information and Privacy Acts). The Administrative Law Officer provides staff advice for all areas of administrative law except investigations, claims, and separations, which are under the cognizance of the Assistant Staff Judge Advocate for Administrative Support, Legal Administrative Officer (LAO). (See also this Manual Chapters 8 and 9).

7002. ETHICS IN GOVERNMENT AND STANDARDS OF CONDUCT. The Administrative Law Officer provides staff advice regarding the Ethics in Government Act of 1978, as amended, Pub. L. #95-521; and the current editions of Standards of Conduct Governing Navy Department Personnel, SECNAVINST 5370.2, MCO 5370.3, DepO 5370.4, and DepO 5370.8.

7003. RELEASE OF INFORMATION

1. Any member of the Command who receives a request to release/disclose information should be aware that virtually any decision concerning release or non-release of personal information has implications under the Privacy Act as well as the Freedom of Information Act. Furthermore, any decision to release or refuse to release information must be confirmed in writing, along with the information concerned and maintained for a period of years. Moreover, all activity in this area must be reported to Headquarters Marine Corps periodically. In this respect, the Assistant Chief of Staff, SJA should be consulted for legal advice and accounting requirements for each type of request.

2. Reports relating to the Freedom of Information Act

a. Tri-annual Freedom of Information Act Cost Report. The Assistant Chief of Staff, SJA is responsible for compiling and submitting this report by 10 May, 10 September, and 10 January.

b. Annual Freedom of Information Act Report. The Assistant Chief of Staff, SJA is responsible for the submission of this report by 10 January of each year.

7004. LABOR RELATIONS LAW. The Special Counsel for Labor Law provides staff advice on all labor law and EEO law matters involving appropriated and nonappropriated fund employees. The following matters shall be submitted to the Special Counsel for Labor Law for legal review prior to disposition: civil service adverse actions, formal EEO complaints, unfair labor practice charges, civilian employee grievances which may have effect beyond the immediate supervisory level, and responses to "whistleblower" allegations. See paragraph 8004e of this Manual. For guidance, consult the Special Counsel for Labor Law, Building 12, extension 3115.

7005. ENVIRONMENTAL LAW. The Assistant Chief of Staff, SJA is also the Special Counsel for Environmental Law. That officer provides staff advice on all environmental law matters, including, but not limited to, the National Environmental Policy Act, 42 U.S.C. §§4231-4361; the Resource Conservation and Recovery Act, 42 U.S.C. §§6901-6987; the Clean Air Act, 42 U.S.C. §§7401-7642; the Clean Water Act amendments to the Federal Water Pollution Control Act, 33 U.S.C. §§1231-1376; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601-9657; the Endangered Species Act, 16 U.S.C. §§1531-1543; and the Coastal Zone Management Act, 16 U.S.C. §§1451-1464.

7006. FINANCIAL DISCLOSURE. The Assistant Chief of Staff, SJA is the MCRD/WRR Ethics Counselor; as such he is responsible for collecting and forwarding to the Commanding General financial disclosure statements from all personnel required to submit them under the provisions of the current edition of DepO 5370.4. All personnel subordinate to the Commanding General, MCRD/WRR who are required to submit a DD 1555 are to submit

this form to their reporting senior, who must examine it and forward the document to the Assistant Chief of Staff, SJA. Those personnel whose reporting senior is the Commanding General are to forward their DD 1555 directly to the Assistant Chief of Staff, SJA. This form may be obtained from the Management Assistance Branch, MCRD, San Diego by calling (619) 225-5710 or FTS 893-5710.

7007. GIFTS. All personnel in receipt of official gifts, or who expect to receive gifts as a result of their official position or duties, must inform this Headquarters prior to accepting them. See the current editions of DepO 5370.4 and SECNAVINST 5370.2.

7008. INDEBTEDNESS ALLEGATIONS. Procedures for command response to indebtedness allegations are set forth in MCO P5800.8B, LEGADMINMAN, Chapter 7 and paragraph 11008 of this Manual. Advice on proper command processing of such allegations may be obtained from the Legal Administrative Officer, extension 3115. To insure that Marines do not become victims of unscrupulous debt collectors, alleged debtors should be advised of the opportunity to consult a judge advocate at the Legal Assistance Office for possible defenses to allegations of indebtedness, and for information concerning consumer fraud and consumer protection laws. Subject to certain exceptions, California law prohibits debt collectors from contacting a debtor's employer unless a court judgment has been rendered or the debtor (or his attorney) has given permission for employer contact. See Cal. Civil Code §1788. Commanders must follow the policy of MCO P5800.8B, LEGADMINMAN, paragraph 7002 which prohibits commanders from cooperating with debt collectors who violate statutory prohibitions against employer contacts on the part of debt collectors. Supplemental procedures for processing letters of indebtedness are set forth in the current edition of MCO P5800.8, LEGADMINMAN. See also paragraph 11008 of this Manual. For further information consult the LAO, extension 3115.

7009. SUPPORT OF DEPENDENTS AND GARNISHMENT. The Marine Corps policy regarding support of dependents is found in MCO P5800.8B, LEGADMINMAN, Chapter 8, CMC White Letter 10-84, and paragraph 11009 of this Manual. Department of Defense policy regarding garnishment of pay for child support or alimony and involuntary child and spousal support allotments is set forth in 32 C.F.R. 734 and 32 C.F.R. 54, respectively. Commanders will insure that members of their commands are counseled regarding their responsibility, and are afforded legal assistance. Command and staff advice is available from the LAO, extension 3115. Garnishment matters fall under the cognizance of the Civil Process Branch, extension 3115.

7010. PATERNITY ALLEGATIONS. Regulations regarding paternity allegations are set forth in MCO P5800.8B, LEGADMINMAN, Chapter 8 (See also 32 C.F.R., §733.5).

7011. BAR ORDERS. Commanding officers will fully review, in consultation with the Administrative Law Officer, each case of a Marine separated punitively or under conditions other than honorable. A determination should be made as to whether the separation is predicated upon conduct which is a clear threat to the peace or security of the Depot. If so, the commanding officer may recommend to the Commanding General that he issue a written bar order prohibiting reentry aboard MCRD. If the Commanding General approves the recommendation and issues the bar order, copies will be provided to appropriate commands in accordance with the current edition of MCO 5510.15. Civilians who represent a clear threat to the peace or security of the Depot may also be given a written bar order prohibiting entry/reentry to MCRD. Dependents and retired personnel may be barred from all or part of the Depot, if they are found to have engaged in misconduct. For example, a dependent found to have stolen items from the MCX, or to have passed bad checks, could be barred from the Depot, or a part of it, e.g., the MCX. Dependents and other persons (e.g., civilian employees) otherwise entitled to enter the Depot must be accorded the opportunity for a hearing, conducted by a Depot Military Magistrate, before the bar order may be issued. See paragraph 6003 of this Manual. Violation of a bar order renders the person subject to prosecution in the United States District Court for violation of 18 U.S.C. 1382. The Administrative Law Officer, extension 3115, will prepare the bar letters. The Provost Marshal will cause them to be served, and shall maintain duplicate original file copies of all bar orders currently in effect. When the person barred from entry ceases to be a threat, the bar letter may be rescinded by the Commanding General.

7012. RELEASE FROM LIABILITY FORMS. Commanding officers, District Directors, and civilian supervisors of activities which plan to conduct events which are intended to have, or conceivably could have, civilian participation are to advise the Assistant Chief of Staff, SJA (Attention: Administrative Law) early in the planning phase of the particular planned activity of the nature, place, and time of the proposed activity. The Assistant Chief of Staff, SJA will provide advice as to whether the use of a release from liability form for that activity may be required or desirable. If such are desirable, the Assistant Chief of Staff, SJA will draft such forms for use by the activity's sponsor. Due to the complexity and legal implications involved, subordinate commands are prohibited from using release or waiver forms which have not been approved for legal sufficiency, for that event, by the Staff Judge Advocate. The activities for which release from liability forms could be required include, for example: Special Services special events such as 10K runs, triathlons, long-term boat and RV storage, etc.; Recruiting Station Command Visits; events which require transportation of civilians (including dependents); and similar events. The use of release forms is not required for continuing events, such as normal MCX activities and the operation of the Clubs System.

STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

CHAPTER 8

INVESTIGATIONS

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STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

CHAPTER 8

INVESTIGATIONS

8001. GENERAL. Commanders at every level use a variety of methods to keep themselves informed as to the conditions in, and readiness of, their commands. Personnel and technical inspections, conferences, meetings, briefings, and a variety of reporting systems are among them. One of the tools available to the commander for information gathering is the "investigation." Investigations range in complexity and formality, but all have the same underlying purpose: INFORMING THE COMMANDER. Considered in this light, it is easy to understand why investigations are convened, and what is important. Just as terrain and the weather affect tactical decisions, the nature of the incident under investigation and the environment in which the investigation is conducted will affect the selection of the type of investigation, the degree of formality, the extent of the report, and the selection of the investigating officer (or team). A recruit death investigation obviously calls for an absolutely complete investigation into all circumstances--including the possibility of maltreatment and the adequacy of first aid and medical care, and the fundamental question of whether training was being properly administered. A \$150.00 "fender-bender" calls for a different level of investigation. Nevertheless, two fundamental concepts apply to all investigations: (1) establishing just what happened, or didn't happen, with a greater or lesser degree of certainty, depending on the circumstances, and (2) determining why something happened. For example, it is one thing to find that Private Jones broke his leg falling down stairs, and that he was sober at the time. That's what happened. Finding out that the stairs are poorly lighted might be the why. The recommendation which might follow is "install a light on the landing." This chapter discusses investigations and how they can be used as a commander's source of information, and when they are required by higher authority. Finally, commanders should bear in mind that investigations can be a defensive weapon. A good investigation can document the facts which establish that a potentially sensitive allegation is not true. With a copy of a "defensive" investigation in his rucksack, a commander could prove to a critic, or to a Congressman, that when the allegation was first brought to his attention, he took the prompt, decisive sort of action expected of a Marine Commanding Officer. He had the matter investigated, and he can prove that there is nothing to the spurious allegation. Bear two final thoughts in mind. First, it's hard to explain why a potentially serious matter was not investigated thoroughly, and second, sooner or later, you can expect the investigation to be released to outside parties, including the press. Therefore, there is simply no substitute for a good, thorough investigation.

8002. COMMAND RESPONSIBILITY. Commanding officers have the primary responsibility to convene, process, review, and forward investigations. They will be guided by the JAGMAN, the current edition of MCO P4400.150, Consumer Level Supply Policy Manual, and this Manual. The investigative responsibility is separate from, and in addition to, the responsibility of supervisors to conduct investigation into matters involving civilian employees or to conduct a preliminary inquiry into alleged violations of the UCMJ. It is also separate from mishap investigations and reporting required by the current editions of OPNAVINST 5102.1 and MCO 5101.8.

1. Only well-qualified Marines should be assigned to conduct investigations. Remember, the grade, reputation, and primary duty assignment of the Marine selected by the commander to conduct the investigation can send a message within the command, to seniors in the chain of command, and to those outside the command (e.g., parents, the press, the public and the Congress) of just how seriously the commander (and the Marine Corps) views the incident under investigation. Death investigations, for example, are obviously too important to be assigned to the junior second lieutenant who just reported in, and is still getting his feet wet. Upon command request, training will be conducted by an officer from the Office of the Assistant Chief of Staff, SJA on conducting investigations. Requests for training may be directed to the Legal Administrative Officer, Building 12, extension 3115.

2. All JAG Manual investigating officers will consult the Legal Administrative Officer prior to beginning their investigations.

3. At the request of a commander, the Assistant Chief of Staff, SJA or a Deputy will personally brief the investigating officer as to the proper conduct of investigations. (This step is highly recommended in all sensitive cases).

8003. STAFF RESPONSIBILITY. The Assistant Chief of Staff, SJA, Deputy Staff Judge Advocates and the Legal Administrative Officer have staff responsibility for providing advice and assistance to commanding officers in these matters, and for processing investigations initiated by or forwarded to the Commanding General for review.

8004. WHEN TO CONDUCT AN INVESTIGATION

1. Mandatory. Investigations must be convened and forwarded in all cases involving any one or more of the following (note the exceptions):

a. Injury. (Line of Duty/Misconduct)

(1) Military Members. A determination (not necessarily an investigation) is required when a member of the naval service suffers an injury (1) which may reasonably result in a permanent disability, or (2) when an injury results in a member's physical inability to perform duty for a continuous period in excess of 24 hours due to treatment as distinguished from observation. (See JAGMAN 0805). If neither of the above threshold circumstances is present, no determination is required. The methods of recording a determination are:

(a) Investigation Required. The injury requires a determination and the injury was incurred under circumstances suggesting that it was incurred not in the line of duty or due to the injured member's own misconduct (See JAGMAN 0814a).

(b) Injury Report NAVJAG 5800/15 Suffices. The injury requires determination (normally reasonable possibility of permanent disability) and the injury was incurred under circumstances where the commanding officer and medical officer concur that it was incurred in the line of duty, not due to the member's own misconduct. (See JAGMAN 0814c).

(c) Health Record Entry Suffices. The injury requires determination (normally physical inability to perform duty for a continuous period in excess of 24 hours due to treatment), there is no probability of disability, and the injury was incurred under circumstances where the commanding officer and medical officer concur that it was incurred in the line of duty, not due to the member's own misconduct. (See JAGMAN 0814(6)).

(2) Civilians. When a civilian is seriously injured on the Depot, or by Depot personnel, an investigation is required (See JAGMAN 2003a and c). Serious injury is one requiring medical treatment beyond simple first aid. This includes investigations into injuries sustained by civilian employees of government contractors operating aboard MCRD (See this Manual, subparagraph 8004.1d).

b. Death

(1) Military Members. A death investigation is required when the death of a member of the naval service occurs from other than natural causes, including, particularly, all apparent suicides (See JAGMAN 0810).

(2) Civilians. An investigation is required when a civilian or other non-naval person is killed in an incident involving government equipment or personnel, or is found dead on this Depot under peculiar or doubtful circumstances, except when NIS has exclusive jurisdiction (See JAGMAN 0810a(2)). This requirement includes investigation into deaths of employees of government contractors operating aboard MCRD (See this Manual, paragraph 8004.1d).

c. Claims Possible for or Against the United States. A claims investigation is required for every incident which is likely to result in a claim for or against the government, including but not limited to all deaths, serious injuries, and substantial loss or destruction of property (See JAGMAN 2002, 2003a and c, 2120, and 2404). In certain cases a limited investigation and report may be made in lieu of a comprehensive claims investigation (See JAGMAN 2007b and 2122b, d, and e for the conditions under which a limited investigation is adequate). (See JAGMAN 2404a for circumstances when a claims investigation is not required).

d. Claims Filed Against the United States. A claims investigation may be required when a claim is filed under the General Claims Regulations, the Personnel Claims Regulations, or the Foreign Claims Regulations (JAGMAN Chapters XX, XXI, and XXII) and an investigation is required but has not already been conducted into the incident giving rise to the claim (See JAGMAN 2002, 2003, 2015, 2120, and 2404).

e. Disclosures of Fraud, Waste, Abuse of Authority, or Violation of Law or Regulation. Whenever a federal civilian employee, former employee, or applicant for employment (either civil service or NAFI) discloses information which alleges a violation of law or regulation; mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, an investigation must be promptly conducted. These are called "whistleblower" allegations and they must be carefully, and most thoroughly, investigated to determine the accuracy of the disclosed information; the disclosing individual's reasonableness in believing the information; the extent, if any, of loss to the government; and the nature, extent and what, if any, corrective measures may be appropriate. This is mandated by Federal Law (5 USC 2302, 10 USC 1587) as well as regulation and order (See DoD Dir 1401.3, and the current edition of MCO 12000.10). This "whistleblower" investigation should be in writing and staffed through the Assistant Chief of Staff, SJA. Any member of the command who receives such a "whistleblower" disclosure, or who learns of one, should immediately contact the Assistant Chief of Staff, SJA for advice, and notify the Chief of Staff, PAO and Assistant Chief of Staff, Comptroller.

2. Discretionary

a. Loss, Damage, or Destruction of Government Property. Missing, destroyed, or damaged government property belonging to the Marine Corps or on charge to the Marine Corps may be the subject of an investigation in accordance with MCO P4400.150, Chapter 6, if the cause of loss, damage or destruction is unknown, or if necessary to relieve an individual of responsibility or determine responsibility. An investigation is not required in the following situations:

(1) Investigative action is not required when it is the opinion of the commanding officer that negligence is not indicated in the loss, damage or destruction or, for reasons known to the commanding officer, negligence or responsibility cannot be determined and an investigation would constitute an unnecessary burden.

(2) An investigation usually is not required when an individual accepts responsibility and voluntarily offers to reimburse the government.

(3) When government vehicles are damaged by collision, and at the discretion of the commanding officer, an investigative report of Motor Vehicle Accident (SF 91A) or similar form may be utilized in lieu of a JAG Manual investigation when the collision does not result in death or injury, the total property damage does not exceed \$2,000.00, and there is no potential for a claim against the government. See the current edition of MCO P4400.150.

b. Administrative Purposes. An investigation may be convened for administrative purposes when there is an extensive loss, damage, or destruction of government property, when there has been a failure of equipment which should be brought to the attention of higher authority for design modifications or the like, when there has been conduct of persons involved in the incident which was especially worthy of praise or censure, or when an investigation would probably discern methods of preventing similar incidents from occurring in the future. (See JAGMAN 0202b).

c. Other Cases. When an investigation is discretionary with the commanding officer, the operational and training requirements of the command, when weighed against the considerable expense involved in conducting and processing investigations, usually makes them impractical, inefficient, and adverse to the best interests of the Marine Corps. Furthermore, when the sole factor making an "investigation" desirable is disciplinary, the proper fact finding procedure is a preliminary inquiry, discussed in this Manual, Chapter 4, not a JAG Manual investigation.

4. Nonappropriated Fund Activities. Upon the occurrence of an incident involving extensive loss, damage, or destruction of nonappropriated fund property, or an incident which may result in a substantive claim (one involving personal property damage in excess of \$600.00 or involving serious injury or death) for or against a nonappropriated fund activity, the officer in charge of the activity will immediately forward a written preliminary report of the incident to the Commanding General (Assistant Chief of Staff, SJA). Fact-finding bodies, when necessary, will be convened by the Commanding General. This reporting requirement is in addition to and separate from other actions involving nonappropriated fund activities and personnel as contained in the current editions of MCO P5300.9 and MCO P1741.7.

8005. INVESTIGATIONS OF INCIDENTS WHEN TWO COMMANDS ARE INVOLVED. If an investigation should be conducted and personnel or government property of more than one command are involved, only one investigation of the entire incident will be made. Determination of which activity will conduct the investigation is ascertained by the following:

1. Incidents Involving Only Depot Organizations. When all activities concerned are Depot organizations, the senior commander shall determine which organization will conduct the single investigation.

2. Incidents Involving Other Organizations. When military organizations outside the Depot are concerned, the Assistant Chief of Staff, SJA will be notified and requested to coordinate with those commands to determine responsibility for the investigation. Reports of investigations conducted within the chain of command of the Commanding General, MCRD, San Diego will be forwarded via the Commanding General prior to organizations outside of this Command.

3. Incidents Occurring More Than 50 Miles From MCRD. For guidance, consult the Assistant Chief of Staff, SJA, Legal Admin Officer, extension 3115.

8006. TYPES OF FACT-FINDING BODIES AND POWER TO CONVENE. The various types of fact-finding bodies and authority to convene them are set forth in JAGMAN 0204 and 0206, respectively. In cases involving government property, see also MCO P4400.150, Chapter 6. Normally, a one-officer informal investigation will suffice. The Assistant Chief of Staff, SJA, LAO, extension 3115 is available to provide advice and guidance on questions concerning which fact-finding body should be convened in a particular case.

8007. DUTIES OF INVESTIGATING OFFICER. Investigating officers will be guided generally by the provisions of JAGMAN Chapters II, VI, VIII, IX, XX, XXI, XXIV, and MCO 4400.150, Chapter 6, as appropriate. In addition, the following will be observed:

1. Primary Duty. Assignment to a fact-finding body will be the primary duty of the appointed member until the investigation is complete. This duty will have priority over all other duties, unless the convening authority otherwise directs.

2. Relations with Other Commands. Before interviewing personnel or visiting areas under the control of other organizations, the investigating officer will inform the other organization commanders (normally through the adjutant) of the investigating officer's presence and purpose in the area.

3. Relations with Armed Forces Hospitals. When an investigating officer needs to interview patients, doctors, or other personnel at any armed forces hospital or needs to obtain diagnosis and prognosis reports, the investigating officer will present a copy of the convening order to the hospital security officer and identify the services desired. Visiting wards or offices of any hospital without prior permission of the hospital is prohibited.

4. Interviews of Civilian Employees. If a federal civilian employee, including any nonappropriated fund employee, requests union representation at an interview with an investigating officer because the employee reasonably believes that disciplinary action against him or her may result from the investigation, the investigating officer shall immediately terminate the interview and contact the Labor Law Counsel at extension 3115 or the Employee Relations Specialist at the Civilian Personnel Office, extension 3462, for guidance. The investigating officer is neither required nor authorized to advise an employee of this right. The employee shall be afforded a

reasonable opportunity, usually 24 to 48 hours, to procure union representation. The representative may be present and assist the employee during all discussions with the investigating officer, so long as the representative's actions and advice do not unduly delay or otherwise impede completing the investigation.

5. Advice Required by the Privacy Act. The Privacy Act applies to JAGMAN investigations. Investigating officers will comply with the requirements of JAGMAN 0308; the current editions of SECNAVINST 5211.2, MCO P5211.2, and the following:

a. A Privacy Act Statement will be included for each statement requested of an individual, when the information requested includes personal information about the declarant for inclusion in a system of records from which information is retrievable by the name or other identifying particular of the declarant (See JAGMAN 0308a(1), (2) and (3)). Nota Bene: If the information is not personal (e.g., description of the duties of a witness) or is not retrievable by the name or other identifying particular of the declarant (e.g., declarant is not the subject of a claim or the investigation), then a Privacy Act Statement is not required for that particular declarant.

b. Normally, social security numbers should not be requested in connection with a JAGMAN investigation (See JAGMAN 0308a(4)). If needed, social security numbers may be obtained from official records, and this source may be noted in the preliminary statement.

c. If individuals are asked to supply personal information or their social security numbers, they must be advised with a Privacy Act Statement each time the information or social security number is collected (See MCO P5211.5, paragraph 6001.2). The Privacy Act Statement will include the following:

- (1) Authority (statute or executive order) which authorizes the solicitation.
- (2) Principal purpose for collecting the information.
- (3) Brief summary of the routine use of the information.
- (4) Whether disclosure is mandatory or voluntary, and the possible consequences for failing to provide the information.

d. The spirit of this section will be violated if a person, in the course of a JAG Manual investigation, obtains the member's oral statements and reduces them to writing, unless the above advice was given first. A sample Privacy Act format is provided in JAGMAN A-3-a. Forms are available from the Assistant Chief of Staff, SJA.

e. The person providing the information will be given a copy of the signed Privacy Act Statement; the original will be attached to the record of investigation (See JAGMAN 0308a(1)).

6. Injured Person Warning. A member may not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury that he has suffered. Any such statement against his interests, signed by a member, is invalid (See 10 USC 1219 and JAG Manual 0306). Any member, prior to being asked to sign any statement relating to the origin, incurrence, or aggravation of any disease or injury that he has suffered, shall be advised of his right not to sign such a statement.

7. Advice and Assistance. Upon request, the Legal Administrative Officer, extension 3115, will provide advice and assistance, and make available copies of appropriate investigative checklists and forms. Before completing the report of investigation, the investigating officer is encouraged to ask the Legal Administrative Officer to provide an informal review of the investigation.

8008. INVESTIGATING OFFICER'S REPORT. The investigating officer will follow the form and procedure set forth in JAGMAN 0608, 2007, or 2122, as appropriate, in submitting the report of investigation. Particular attention should be paid to the specific requirements for investigative reports contained in JAGMAN Chapters II, III, VI, VIII, IX, XX, XXI, XXIV and MCO P4400.150, Chapter 6 as applicable.

8009. REVIEW AND FORWARDING INVESTIGATIVE REPORTS

1. Review by Convening Authorities. Reports of investigation will be reviewed and action taken pursuant to JAGMAN 0210, 0815, 2008, 2009, 2123, 2404c, and MCO P4400.150, Chapter 6, as appropriate. Reports that do not contain all matters required by applicable sections of the JAGMAN, including compliance with the Privacy Act, may be required to submit supplemental reports with the necessary information. If practicable, however, these matters can be administratively determined, added and considered by the convening authority by endorsement on the report.

2. Forwarding Reports. An original and four copies of each completed report of investigation, together with the convening authority's action, will be forwarded to this Headquarters (Attention: Assistant Chief of Staff, SJA) not later than 15 working days after an incident occurs (See JAGMAN 0211(5)). If there appears to be a claim for or against the government, an additional copy will be included for forwarding to the appropriate Naval Legal Service Office (See JAGMAN 0211 for additional routing and copy requirements).

3. Convening Authority's Actions. Upon review of the investigative report, the convening authority's endorsement will, when appropriate, reflect the following:

a. Explicit approval, disapproval, or modification of the proceedings, findings of fact, opinions, and recommendations; a clear statement of the actions which have been or will be taken; and command recommendation(s) resulting from the report (See JAGMAN 0210b).

b. Specific approval, disapproval, or modification of line of duty and misconduct determinations (See JAGMAN 0815a).

c. Documentation that an injured member was afforded the right to a hearing, when required by JAGMAN 0815a(3).

d. Documentation that a person found negligent in the loss or damage or destruction of government property was afforded an opportunity to voluntarily reimburse the government (See MCO P4400.150, Chapter 6.) An appropriated fund civilian employee will be referred to the Civilian Personnel Office, Employee Relations, extension 3462. A nonappropriated fund civilian employee will be referred to the head of the nonappropriated fund activity.

e. Name(s), address(es), and when available, the policy number(s) and extent of coverage(s) of the insurance company(ies) carrying liability insurance on private vehicle(s) when there is a potential claim for or against the government. (See JAGMAN 2007.)

f. Documentation of compliance with JAGMAN 0306 and 0308 as to the injured member and Privacy Act.

4. Authenticating Signatures. Each injury and death report will be endorsed by the injured or deceased member's commanding officer, except in cases where a report is prepared by another activity because the injury or death occurred at a place distant from the injured or deceased party's assigned or attached organization.

8010. CLAIMS. The Assistant Staff Judge Advocate for Administrative Support/Legal Administrative Officer has staff cognizance and responsibility for all claim matters arising out of activities under the Commanding General, MCRD, San Diego and WRR organizations.

1. The JAGMAN, Chapters XX through XXIV, contains information and administrative instructions for claims processing, investigation, and settlement. All claims will be forwarded to the Commanding General (Attention: Assistant Staff Judge Advocate for Administrative Support), MCRD, San Diego, California.

2. To strengthen the government's case for denying access of the claimant to the investigative report in response to FOIA, Privacy Act, or discovery requests, convening orders for JAGMAN investigations when tort claims are likely should refer to JAGMAN

Chapter XX and include the following statement: "This investigation is being convened for the purpose of assisting attorneys representing the interests of the United States in this matter because of anticipated litigation."

3. The investigating officer should include in the preliminary statement of the report the following statement: "This investigation has been conducted and this report is being prepared in contemplation of litigation and for the express purpose of assisting attorneys representing the interests of the United States in this matter."

STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

CHAPTER 9

ADMINISTRATIVE SEPARATIONS

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STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

CHAPTER 9

ADMINISTRATIVE SEPARATIONS

9001. **GENERAL.** This section provides information, references, and administrative instructions relating to the processing of certain administrative separations. Separation processing for MCRD, San Diego and WRR units shall be in accordance with this Manual and the current editions of MCO P1900.16 and Depot Order P1900.6.

9002. **COMMAND RESPONSIBILITY.** Commanding officers will periodically (not less often than semiannually) review the records of all enlisted Marines of their command to determine whether counselling or processing for administrative separation pursuant to MCO P1900.16c, MARCORSEPMAN, Chapter 6, is either required or desired. Commanding officers will establish administrative systems to ensure that required counselling in accordance with paragraph 6105 of MCO P1900.16c, MARCORSEPMAN is completed and documented in the Marine's SRB. MCRD form 1610/19 will be used to record the counselling. Such a system should require review of every Marine's record upon reporting to this Command, as well as each time the Marine in question is the subject of an offense report or disciplinary action; receives a page 11 counselling entry; is involved in civilian criminal activity; tests positive on a urinalysis, or is otherwise identified as possessing or using illegal drugs; is reported to have been involved in an incident that is alcohol related; is determined to have failed to support his dependents or to have failed to pay just debts; receives unsatisfactory proficiency/conduct marks or an unsatisfactory fitness report; is the subject of an adverse finding at military traffic court; and when he receives orders to detach from the Command. As required by the current edition of MCO P5300.12, a page 11 entry will be made for each incident of illegal drug abuse or possession, and for the second and subsequent incidents of alcohol abuse. Additionally, as required by the current editions of MCO P5300.12 and MCO P1610.7, a special fitness report will be prepared for any sergeant and above identified or confirmed to be involved in the use of unlawful drugs. In all separation cases in which there is evidence of or reference to urinalysis testing for drug abuse, the commander will identify the testing premise in the correspondence which initiates the discharge processing. The terminology used in paragraph 3003 of MCO P5300.12 will be used.

9003. STAFF RESPONSIBILITY

1. The Assistant Staff Judge Advocate for Administrative Support will provide advice and assistance to commanding officers concerning the following types of administrative separations:

- a. Misconduct.
- b. Homosexuality.
- c. Separation in Lieu of Trial by Court-Martial.
- d. Fraudulent Enlistment.
- e. Security.
- f. All other involuntary enlisted administrative separations, if the Marine has six or more years of total active and reserve naval service.
- g. Involuntary Officer Separations and Separations for Cause.

2. Services provided by the Assistant Chief of Staff, SJA, upon request by commanders, include preliminary review of records, investigations, police reports, and SRB's to determine which, if any, grounds for administrative separation may exist; the preparation of documents for the commander's notification to the respondent and explanation of rights; the respondent's execution of rights; and the drafting of the commander's forwarding endorsement, and all other related correspondence.

3. The Depot Adjutant has staff cognizance and responsibility for providing advice and assistance to commanding officers concerning all other enlisted administrative separations contemplated in the current edition of MCO P1900.16, MARCORSEPMAN, or other directives.

4. Commanders in the WRR may make arrangements to link their Zenith Z-150 computers to Assistant Chief of Staff, SJA's word processor. In those cases, Assistant Chief of Staff, SJA can prepare all correspondence for print-out and execution at the recruiting station.

9004. SEPARATION IN LIEU OF TRIAL BY COURT-MARTIAL. Processing is initiated by the accused. The commanding officer's recommendation as to approval or disapproval of the accused's request will be indicated on the Request for Legal Services (MCRD form 5811/8).

9005. OFFICER SEPARATION. Commanding officers will consult the Assistant Chief of Staff, SJA before initiating processing of any officer for involuntary separation.

9006. ASSIGNMENT OF MEMBERS TO ADMINISTRATIVE DISCHARGE BOARDS. Administrative discharge boards are convened by the Commanding General. The Assistant Chief of Staff, G-1 coordinates nominations for members of administrative discharge boards through a pool of qualified commissioned, warrant, and noncommissioned officers (E-7 and above). Each commanding officer exercising Special Court-Martial convening authority will provide nominees for assignment as members of administrative discharge boards to the Assistant Chief of Staff, G-1, as required. Appointing orders and modifications will be prepared by the Assistant Chief of Staff, Staff Judge Advocate. Duty as a member of an administrative discharge board is the primary duty of the appointed member and takes precedence over all other duties. Only the convening authority may excuse an appointed member.

9007. LEGAL ADVISOR. The Assistant Chief of Staff, SJA will provide a qualified judge advocate for appointment as Legal Advisor to administrative discharge boards when directed by the convening authority.

9008. PERIODIC EXPLANATION. Commanding officers will give an explanation of possible separation consequences, with a written fact sheet, along with training under UCMJ, Article 137, as required (See MCO P1900.16C, MARCORSEPMAN, paragraph 6103).

STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

CHAPTER 10

CIVIL PROCESS

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STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

CHAPTER 10

CIVIL PROCESS

10001. GENERAL. In accordance with JAGMAN Chapter XIII, the Civil Process Branch of the Administrative Support Division, Office of the Assistant Chief of Staff, SJA has responsibility for coordinating matters relating to civilian warrants of arrest, surrender of military personnel to civil authorities, service of civil process, and all related matters for MCRD, San Diego. Commanding officers will be notified concerning all warrants, charges, and amounts of bail before an individual is transferred to civilian authorities. The Assistant Chief of Staff, SJA has responsibility for providing advice to the WRR on matters of civil process. Commanding officers in the WRR are to be guided by the procedures of this chapter whenever possible in service of process upon or surrender of military personnel of their commands. Service of process on military personnel in the WRR often raises difficult issues. Commanding officers in the WRR are encouraged to consult with the Assistant Chief of Staff, SJA, Deputy Assistant Chief of Staff, SJA or Legal Administrative Officer whenever confronted with service of process on one of their personnel.

10002. ARREST WARRANTS

1. In arrest warrant cases at MCRD, commanding officers are responsible for providing transportation to Building 12 and ensuring the presence of the member concerned, on the date and time specified. If bail is to be paid, the member should bring a money order (payee left blank) for the exact amount of bail. If the member cannot or will not make bail, and is to be taken into custody, the member must wear civilian attire. (The military uniform is not appropriate attire for civilian jails.)

2. When military charges are pending against a member scheduled for delivery to civil authorities, the member's commanding officer must notify the Civil Process Branch of the nature of the military charges, date of trial, and any other pertinent information. Members against whom military charges are pending will not be surrendered to civil authorities without the permission of the Commanding General (Attention: Assistant Chief of Staff, SJA). (See JAGMAN 1308a).

3. Subsequent to delivery to civil authorities, a completed copy of the Standard JAG Manual Agreement for Delivery to Civil Authorities containing the date and time of arrest will be returned to the member's commanding officer by the Civil Process Branch (See JAGMAN 1305 and A-13-b).

4. When delivery to civil authorities is refused, the commanding officer will complete the report required by JAGMAN 1310 (See the Civil Process Branch for assistance). Attention is also directed to MCO P1900.16C, MARCORSEPMAN, paragraph 6210.7 concerning action which should be taken in matters involving felony conviction by civil authorities. Note also that conviction by civilian authorities on drunk driving charges may lead to revocation of Depot driving privileges (See the current edition of DOD Dir 1010.7). (See also this Manual, paragraph 7008 and the current edition of MCO 5510.15 for review required for Bar Letters).

5. Whenever possible, requests from civilian authorities for the custody of Marines and naval personnel aboard the Depot should be referred to the Civil Process Branch during normal working hours, extension 3115. Response to requests for custody after normal duty hours will be as follows:

a. The requesting authority must present a warrant for arrest.

b. The requesting authority should be questioned to determine whether there is a need to act upon the request before the next working day. If the requesting authority needs immediate action, the request may, if appropriate, be approved, subject to the following conditions:

(1) The Depot Officer of the Day may authorize the transfer of custody. Military police or subordinate commanders may not.

(2) The member whose custody is requested will be escorted to the Depot Officer of the Day by a superior noncommissioned or commissioned officer.

(3) Prior to releasing the member whose custody is requested to the requesting authority, the requesting authority must execute a "turnover agreement." An example is set forth in JAGMAN, Appendix A-13-b (See also JAGMAN 1305).

(4) A warrant must be presented to the Depot Officer of the Day. The warrant must be issued by the State of California. However, if the warrant is from another state, custody may be transferred if--and only if--the individual whose custody is requested waives extradition. See JAGMAN 1302. If the member desires to waive extradition, it may be done in writing, using JAGMAN A-13-a, after affording the opportunity to consult with a judge advocate. If the member desires to waive extradition, the Depot Officer of the Day should contact the Assistant Chief of Staff, SJA or his representative, to assure that proper procedures are followed.

10003. SUBPOENA, SUMMONS, AND COMPLAINTS. The Assistant Chief of Staff, SJA must be notified immediately, by telephone or electronic message, upon the receipt of information that a member of the Command or civilian employee has received or has information regarding attempts to serve a subpoena, summons, or complaint in any form in any litigation in any court, or administrative body (state or federal), arising out of the performance of official duties, or otherwise involving the official interests of the United States. The complaint, summons, subpoena, or other form of process will be forwarded by the most expeditious means to the Assistant Chief of Staff, SJA or to a Navy Legal Services Office, as directed by the Assistant Chief of Staff, SJA. All subpoena and civil process served aboard MCRD, San Diego will be served at the Civil Process Branch, Building 12, extension 3115, or at other places designated by the Legal Administrative Officer (See JAGMAN 1321, et seq).

1. All subpoena and civil process arriving by mail to be served by the commanding officer shall be sent to the Civil Process Branch for service.

2. Upon notification that the Civil Process Branch holds a subpoena or civil paper on a member, the same procedures outlined in paragraph 10002.1 apply.

3. All documents subpoenaed will be delivered by the commanding officer to the Civil Process Branch in certified copies.

10004. REPOSSESSION OF PROPERTY. Repossession of personal property aboard MCRD are coordinated through the Civil Process Branch or by voluntary repossession supervised by the commanding officer. Questionable cases should be referred to the Civil Process Branch. Attempted repossessions not corresponding to these procedures shall be referred to the Civil Process Branch (See also this Manual, paragraph 11008, Debt Collection).

10005. LEGAL HOLD REQUESTED BY CIVIL AUTHORITIES. Responses to requests by civil authorities to place a Marine on "legal hold" will be taken by the Civil Process Branch, extension 3115.

10006. PROCESS SERVERS. Civilian process servers are permitted aboard MCRD for the purpose of serving individuals aboard the Depot. The Civil Process Branch, Building 12, extension 3115, is the only facility aboard the Depot where such process servers may serve subpoenas and civil process.

10007. LEAVE AND LIBERTY TO BE GIVEN PERSONS SERVED WITH CIVIL PROCESS

1. JAGMAN 1320e provides: "In those cases where personnel either are served with process, or voluntarily accept service of process, the commanding officer normally will grant leave or liberty to the person served in order to permit him/her to comply with the process; provided, such absence will not prejudice the best interests of the naval service."

2. No person served with process shall be denied leave or liberty to respond to the process without the prior approval of the Commanding General (Attention: Assistant Chief of Staff, SJA).

10008. GARNISHMENT. Department of the Navy procedures regarding legal process brought to enforce legal obligations to provide child support or alimony payments is found in 32 C.F.R. Parts 54 and 734. The Civil Process Branch is designated to respond to such process for this Command (See also this Manual, paragraphs 7006 and 11009).

10009. JURY DUTY

1. Participation on Civilian Juries Prohibited. Department of the Navy policy is that the U. S. Constitution (Federal supremacy) precludes state courts from requiring active duty military personnel to serve as members of juries in state courts. The Attorney General of the State of California concurs (See 65 Ops.Cal.Atty.Gen. 430 (1982)). California Code of Civil Procedure, section 202.7, exempts nondomiciliaries serving in California. Service on civilian juries by members of this Command, absent approval by the member's commanding officer is therefore prohibited. Commanding officers in the WRR should contact the Assistant Chief of Staff, SJA for assistance in obtaining release from jury duty of military personnel assigned in states other than California.

2. Required Action. Every military member of this Command who receives a notice for jury duty shall report the matter to his commanding officer, and proceed as soon as practicable to the Legal Assistance Office, Building 12, with the notice and related correspondence.

10010. BAR LETTER VIOLATION. Bar letter violators may be prosecuted in federal court. All members of this Command are required to report such violations to the Provost Marshal for notification to federal authorities. For advice, consult the Special Assistant U. S. Attorney, extension 3115 (See paragraph 7008 of this Manual and the current edition of MCO 5510.15).

10011. COMMAND REPRESENTATIVES IN CIVIL COURTS

1. When a member of this Command is to be tried by a local civil court in a criminal case other than a misdemeanor traffic violation, the officer exercising Special Court-Martial jurisdiction shall appoint an officer within that command to accompany the member as a command representative. In that capacity, the assigned officer may assist the member in obtaining civilian counsel, testify as to the member's character and military record, and explain relevant Marine Corps and Navy policies to the court, if the information or assistance is requested.

2. Officers assigned as command representatives shall comply with the following:

a. Prior to Going to Court

(1) All available information within the command regarding the facts of the case should be obtained and reviewed. If there appears to be possible grounds for contesting the charges or the charges are of a serious nature, the member should be advised to seek legal advice. If the member desires to retain an attorney, but requires assistance in locating an attorney, he shall be referred to a Depot Legal Assistance officer. The member shall be informed that the command representative is prohibited from acting as an attorney in court.

(2) A synopsis of the member's military record should be obtained and superiors interviewed regarding the member's character and value to the service. If desired, the member and or attorney should be informed that the command representative is available to testify as to the member's military record and character.

(3) The command representative should attempt to determine the amount of money that the member has on hand, on the books, or otherwise available for the payment of any possible fine.

(4) If the member is represented by civilian counsel, the command representative shall not interfere in the handling of the case, but may cooperate with the counsel to the extent authorized by this Manual, if requested.

(5) If the member absents himself from his organization prior to the scheduled appearance in civil court, the command representative shall immediately notify the Legal Administrative Officer, extension 3115.

b. Conduct in Court

(1) All appearances at court by the command representative will be in the appropriate Winter or Summer Service "A" uniform.

(2) If the member is represented by a civilian counsel, the command representative will remain available to testify and will observe the proceedings to report all developments and results of the trial to the organizational commander.

(3) The command representative has no official standing in the eyes of the court and may take part in the proceeding only if invited. The command representative will act with the respect and dignity due the court. Failure by the command representative to maintain appropriate conduct could result in summary punishment for contempt of court. The command representative shall not attempt to bargain with the prosecuting attorney with regard to the pleas, offenses, sentence, or disposing the case out of court.

(4) For cases in San Diego, a member of the San Diego Shore Patrol will normally be present in court for liaison purposes. Prior to trial, the command representative should inform the Shore Patrol liaison of his presence. The command representative should be present in the courtroom when the case is called but must remain silent unless called upon by the judge. If the judge does not understand the purpose of the command representative, the reason should be explained to the judge. The command representative should respond to any and all questions by the judge. The command representative shall avoid giving the impression that he is representing the member or acting as an inspector for the Marine Corps.

(5) If the sentence includes a fine greater than the funds possessed by the member, the command representative shall not guarantee to the court that the member will pay the fine.

(6) The command representative shall make no assurance to civilian authorities that the member will be tried by court-martial for violations of federal or state law or that the member will be retained in or discharged from the Marine Corps.

(7) The command representative shall not accept custody of the member or assure civilian authorities that the member will appear for subsequent proceedings. The command representative may state that the member will normally be granted leave or liberty to appear at further proceedings and that an officer would accompany the member. The representative may explain that the Marine Corps has no authority to confine or restrict a member to ensure presence in a civil court.

(8) Under no circumstances will the command representative express displeasure with the findings or sentence announced by the court.

(9) The command representative should always keep in mind that he is representing the Marine Corps in a situation that may have serious effects upon the member and those service personnel who may follow in that particular court. In addition, the command representative is assisting this Command in establishing and maintaining a cooperative relationship between MCRD and the civilian community.

10012. CIVILIAN CONFINEMENT

1. When a Marine is placed in confinement by civilian authorities (IHCA), the nearest Marine Corps activity must establish and maintain liaison with the civil authority. A military detainer letter must be filed with the civil authority exercising control over the Marine. The Commandant of the Marine Corps (MHL-30), as well as the Marine's Commanding Officer, must be advised by message of the date, time, and place of arrest; place of confinement; charges pending; prospective date of trial; status of the court proceedings; etc. Additionally, the requirements of paragraphs 5013 and 5014 of MCO

p5800.8 (LEGADMINMAN) must be complied with. Further, the activity assuming cognizance over the IHCA Marine must report any change in date of trial; charges; or status of the Marine's case to Commandant of the Marine Corps (MHL-30) and the Marine's parent command. (See the current edition of Depot Order 5800.12 for local requirements).

2. If the Marine is released on bail, personal recognizance, or work release program, the civil authorities must be advised that the Marine will not necessarily be held in any particular geographical location; that the Marine Corps will not guarantee his appearance at trial; that the Marine will be given the opportunity to appear at his own expense if the exigencies of the service permit; and that the Marine Corps cannot accept custody of Marines where the Marine is under court order or requirement to remain in the geographical jurisdiction of civil court.

3. Upon the completion of trial, Commandant of the Marine Corps (MHL-30) and the Marine's parent command must be informed by message concerning the results of that trial, including copies of any and all court documents evidencing convictions and appeal status. Copies of the court documents evidencing convictions should be forwarded to Commandant of the Marine Corps (MMRB) and the parent command.

10013. FOREIGN CONFINEMENT

1. Procedures governing the confinement of military personnel by Mexican authorities in the San Diego area are found in the current edition of COMNAVBASESANDIEGOINST 5820.2. Commanders are responsible for the health, welfare, and morale of personnel from their commands who are confined by Mexican authorities.

2. Upon notification of confinement, the local commander must provide the Commander, Naval Station, San Diego (Attention: Staff Judge Advocate) with appropriate accounting data to cover the expenses associated with the member's confinement. This includes, but is not limited to, counsel fees and expenses, health and comfort items, and supplemental food and clothing requirements. The accounting data is obtained through the Assistant Chief of Staff, Comptroller. Monthly visitation reports are required to be submitted via the chain of command to the Commander, Naval Station, San Diego.

3. When a Marine is placed into confinement by foreign authorities, Commandant of the Marine Corps (MHL-30) and the Judge Advocate General of the Navy must be notified by message from the Marine's command. The current editions of SECNAVINST 5820.4 and MCO P1900.16 apply. The message must state the time, date, and place of arrest and confinement; the charges; and status of the Marine's case. Additionally, messages must be sent to Commandant of the Marine Corps (MHL-30) to inform Commandant of the Marine Corps of any changes in the Marine's case and its disposition.

4. Marines in the hands of foreign authorities have the opportunity to defray all reasonable court expenses, including bail, court fees (not fines, however), and attorney fees and expenses. This is true for pre-trial, trial, appeals, and post-trial stages of the case. Additionally, the command has the responsibility to ensure that the conditions of the Marine's incarceration is comparable to the conditions of military confinement wherever possible. This could include accepting custody from the foreign authorities and insuring the Marine's presence for trial; furnishing health and comfort items; clothing; medical care; legal assistance; command visits; etc. (See the current edition of COMNAVBASESANDIEGOINST 5820.2).

5. If a Marine of this Command is incarcerated by foreign authorities, contact the Assistant Chief of Staff, SJA (Admin Law) for advice as to applicable procedures and responsibilities.

10014. OFFENSES BY CIVILIANS. As most of MCRD is on property over which the federal government has exclusive legislative jurisdiction, civilians who commit offenses while aboard the Depot (with the exception of a small portion of the Depot which lies adjacent to Pacific Highway) may be prosecuted in the United States District Court. Such violations should be reported to PMO for appropriate investigation and possible referral to CID or NIS. Questions or advice with regard to offenses by civilians should be directed to the Special Assistant U. S. Attorney, extension 3115. The Special Assistant U. S. Attorney maintains a jurisdiction map showing the portions of the Depot

over which the federal government has exclusive jurisdiction, the parcels over which it has only partial (concurrent) jurisdiction, and the two parcels over which it has only proprietary ownership, but not legislative jurisdiction. See paragraph 1002.1b of this Manual.

STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

CHAPTER 11

LEGAL ASSISTANCE

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STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

CHAPTER 11

LEGAL ASSISTANCE

11001. GENERAL. The Legal Assistance Office provides legal advice and assistance to military personnel, active duty and retired, and their dependents on civil legal matters. The legal assistance program is provided in accordance with Section 651 of Public Law 98-525 and JAGMAN, Chapter XIX, by judge advocates and paralegal personnel from MCRD, San Diego, Legal Assistance Office, extension 3164.

11002. SERVICES PROVIDED. Assistance includes, but is not limited to, cases involving family law, garnishment, child support, spousal support, wills, powers of attorney, directives to physicians, promissory notes, landlord/tenant matters, citizenship, taxes, paternity, real estate, indebtedness, insurance, consumer matters, violations of the Civil Rights Act, the Uniformed Services Former Spouses' Protection Act, and notarial services.

11003. SERVICES NOT PROVIDED. Legal assistance attorneys do not provide assistance regarding disciplinary matters under the UCMJ, matters related to the conduct of military investigations, or administrative discharge boards. These services are provided by defense counsel. Legal assistance attorneys are also prohibited, by 18 U.S.C. Sections 203 and 205, from acting as an attorney for a client whose interests are opposed to the interests of the U. S. Government. Legal assistance attorneys may, however, identify for such persons the provisions of the law under which a potential claim might be brought, and provide them with claims forms.

11004. PROCEDURES. Clients may schedule an appointment with a legal assistance attorney by calling extension 3164. Clients with bona fide emergency cases, who cannot make a prompt appointment, may see a legal assistance attorney on a "first come, first served" basis. If a client must cancel an appointment, the Legal Assistance Office should be notified. Personnel of the WRR who are not stationed in the San Diego area may obtain limited legal assistance, as restricted by JAGMAN 1907e, over the telephone by calling FTS 893-3164, AUTOVON 957-3164, or commercially (619) 225-3164. Members of Weapons Training Battalion may utilize the joint Legal Assistance Office at MCB, Camp Pendleton, California.

11005. LEGAL ASSISTANCE LECTURES. Legal assistance attorneys are available to give lectures or classes on legal assistance topics to groups of interested persons, including, but not limited to, command scheduled training, spouses groups, and family days. Arrangements for speakers or instructors may be made by calling extension 3164.

11006. PREVENTIVE LAW PROGRAM. The Preventive Law Program assists commanders in maintaining morale and, therefore, readiness by assisting Marines in keeping their legal affairs in order. The program consists of lectures given to units and groups as well as pamphlets and newspaper articles on problems commonly encountered by Marines. When time permits, Marines with legal problems can be interviewed and appointments can be made with a legal assistance attorney.

11007. VIOLATIONS OF THE CIVIL RIGHTS ACT. As required by the current edition of SECNAVINST 5350.2, legal assistance attorneys assist military personnel and their dependents in seeking relief from off-base discrimination and other violations of civil rights laws, including allegations of discrimination in public accommodations and police brutality by civilian police. (Allegations of police brutality by military police/CID/NIS should be raised through the chain of command.) Commanders shall report all cases of off-base discrimination that come to their attention to the Assistant Chief of Staff, SJA, extension 3115, by initial telephone report, followed by written confirmation.

11008. DEBT COLLECTION. California has a very extensive set of laws which restrict the actions of debt collectors in collecting consumer debts. These laws are incorporated into the Marine Corps' policy on complaints of indebtedness by the current edition of MCO P5800.8, LEGADMINMAN. Generally, these California statutes prohibit a debt collector from communicating with a debtor's employer unless the debtor has consented in writing to such communication or unless the communication is in writing and

is solely to verify the debtor's employment or location. To ensure that commanders do not inadvertently aid debt collectors in violating the law, and to protect military personnel from unlawful debt collection methods, complaints of indebtedness which are addressed to commanders should be forwarded to the SJA office for a determination of whether the debt collector has complied with the governing directives. The commander will be advised as to whether the complaint of indebtedness should be processed in accordance with the current edition of MCO P5800.8, LEGADMINMAN, or whether the correspondence should be returned to the debt collector.

11009. INVOLUNTARY CHILD AND SPOUSAL SUPPORT ALLOTMENTS AND DIVISION OF PROPERTY UPON DISSOLUTION OF MARRIAGE. It is the policy of the Department of Defense, as reflected in DOD Directive 1340.xx to require military personnel on active duty to make involuntary allotments from pay as payment of child, or child and spousal, support payments when the military person is two months or more behind in payments. The military person must be given an opportunity to consult a judge advocate prior to commencement of the involuntary allotment. Upon receipt of notification that an involuntary allotment request is pending against a member of their unit, commanders should direct that active duty military personnel to contact the legal assistance office for the required consultation with a judge advocate.

11010. NOTARIAL ACTS. The Legal Assistance Office provides civilian notary public services to those persons mentioned in 11001 above.

11011. EXPANDED LEGAL ASSISTANCE PROGRAM. The objective of the Expanded Legal Assistance Program is to provide full representation, including representation in civilian courts, for eligible clients who do not have the financial ability to hire a civilian attorney in connection with their personal legal problems. Eligibility for the program is restricted to unmarried E-3's or below, married E-4's or below, dependents of married E-4's or below, and others on active duty who would suffer extreme financial hardship if they hired a civilian attorney.

11012. INCOME TAX ASSISTANCE PROGRAM. The Legal Assistance Office supervises the training of unit representatives and other volunteers under the Volunteer Income Tax Assistance (VITA) program which provides help in the preparation of federal and California income tax returns. These trained personnel are capable of handling the majority of income tax questions and income tax return preparation for federal and California returns. The Legal Assistance Office provides aid in the preparation of those income tax returns which unit tax representatives have not been trained to handle, including state tax returns for states other than California. Additionally, a full range of federal and individual state income tax return forms and publications are available at the Legal Assistance Office.

11013. CONFIDENTIAL CHARACTER OF SERVICE PROVIDED. Protection of the confidence of a legal assistance client is essential to the proper functioning of the legal assistance program in order to assure all military personnel that they may disclose, frankly and completely, all material facts of their problems to legal assistance personnel, without fear that their confidence will be abused or used against them in any way. All information and files pertaining to legal assistance clients will be treated as confidential and privileged in the legal sense. These privileged matters may not be disclosed to anyone by legal assistance personnel, except upon the specific permission of the client, and disclosure may not be ordered by superior military authority.

11014. LEGAL ASSISTANCE REPORT. The Assistant SJA for Client Services is responsible for submitting the report required by paragraph 1913 of JAGINST 5800.7B (JAGMAN).

STANDING OPERATING PROCEDURE FOR LEGAL MATTERS

APPENDIX A

FORMS LIST

<u>Form No.</u>	<u>Form Title</u>
MCRD 1610/19	Permanent Personnel Counseling
MCRD 1900/17	Recommendation for Administrative Discharge
MCRD 1910/22	Notification and Acknowledgment of Separation Proceedings (Board Not Required)
MCRD 1910/23	Notification and Acknowledgment of Separation Proceedings (Board Required)
MCRD 5800/4	Record of Authorization for Search
MCRD 5811/8	Request for Legal Services
MCRD 5811/9	Voluntary Statement
MCRD 5811/10	Accused's Notification and Election of Rights for Office Hours Records May Be Used in Aggravation in Event of Later Court-Martial
MCRD 5811/11	Accused's Notification and Election of Rights for Office Hours Record Cannot Be Used in Aggravation in Event of Later Court-Martial
MCRD 5811/12	Accused Acknowledgment of Appeal Rights for Office Hours
MCRD 5811/13	Preliminary Inquiry Report
MCRD 5811/15	Suspect's Rights Acknowledgment/Statement
MCRD 5811/16	Captain's Mast/Office Hours Guide
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MCRD 5830/4	Combined Privacy Act Statement and Section 0306 Warning

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